CICERO

IN TWENTY-EIGHT VOLUMES

VI

PRO PUBLIO QUINCTIO—PRO SEXTO ROSCIO AMERINO—PRO QUINTO ROSCIO COMOEDO—DE LEGE AGRARIA I., II., III.

WITH AN ENGLISH TRANSLATION BY

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CICERO

VI

PRO QUINCTIO PRO ROSCIO AMERINO
PRO ROSCIO COMOEDO
DE LEGE AGRARIA CONTRA RULLUM

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PREFATORY NOTE

The Orations translated in this volume are of varied nature and interest (private, criminal, political). *Pro Quinctio* and *Pro Quinto Roscio Comoedo* deal with private suits connected with a partnership dispute, the first turning upon the execution of a praetor's order; *Pro Sexto Roscio Amerino* is a public or criminal case, in which a son is accused of having murdered his father; and the three speeches (a fourth is lost) against Publius Servilius Rullus (generally called *De Lege Agraria*) are political and economical, being an attack upon an agrarian law proposed by the tribune Rullus. All are more or less incomplete, especially *Pro Roscio Comoedo*, and the text of the end of the second speech against Rullus is very corrupt.

The two private orations are full of legal technicalities and difficulties which have much exercised the commentators, and made a considerable number of notes necessary to assist the general reader. Although the interpretation of certain passages still remains undecided, it is hoped that the notes may serve their purpose. *Pro Roscio Amerino* and *De Lege*

Agraria are simpler and generally need less explanation. It is curious that the only separate editions with English notes are those of *Pro Roscio Amerino.*

The text is based upon the edition by C. F. W. Müller (Bibliotheca Teubneriana, Leipzig, 1882, 1885), but it will be seen that many alterations have been made in it wherever the reading of the older MSS. or more recent suggestions appeared to give a better sense. In this respect the greatest assistance has been derived from A. C. Clark's edition of the text with critical notes (Oxford, 1909).

A short Bibliography of the most useful books on each oration has been added. The editions of R. Klotz (German, 1835–1839) and G. Long (1851–1858) contain notes on all of them. H. J. Roby (*Roman Private Law*, ii., 1902) and A. H. J. Greenidge (*The Legal Procedure of Cicero's Time*, 1901) have written elaborate essays on the subject matter of *Pro Quinctio* and *Pro Roscio Comoedo.* To these works in particular and to other books mentioned in the Bibliography (where available) the translator desires to express the fullest obligation.

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THE SPEECH IN DEFENCE OF PUBLIUS QUINCTIUS

INTRODUCTION

According to Aulus Gellius (*Noctes Atticae*, xv. 28. 3) Cicero delivered the following oration in 81 B.C. during the consulship of M. Tullius Decula and Cn. Cornelius Dolabella,[a] when he was only twenty-six years of age. It is his first extant speech, although he mentions that he had delivered others. Part of it is lost, but is clearly summarized at the end, and fragments are to be found in a rhetorical treatise by a fifth-century rhetorician, Julius Severianus.[b]

The facts of the case, as stated in iii. 11 to ix. 34, are the following, the point at issue being whether an order of the praetor, characterized by Cicero as unfair, had been properly carried out.

Gaius Quinctius, the brother of Cicero's client Publius Quinctius, owned a cattle farm and land in Gallia Narbonensis and had taken Sextus Naevius into partnership. He was suspicious of Naevius's management of certain transactions, but no actual rupture took place, and the partnership continued until Gaius died suddenly in Gaul, Naevius being present at the time. Publius was left his brother's

[a] Not the same as the praetor in § 30. The consul was a partisan of Sulla, and during his administration of the province of Macedonia was accused of extortion by the young Julius Caesar, but was acquitted.

[b] See note *b* on xxvii. § 85.

heir by will. Some debts had been incurred by Gaius, which Publius had to pay. Naevius, who had married a cousin of Publius, then offered to advance him the money, and persuaded him not to sell certain private property in Gaul to liquidate the debts, as he had intended to do. Later, when reminded of his promise, Naevius declared that he would not let Publius have a penny until the accounts and state of the affairs of the partnership had been gone into, and he could feel sure that no business dispute would crop up later. Publius thereupon sold his property, paid a pressing debt, and called upon Naevius to come to some arrangement about the matter. This, however, was found to be impossible.

After the failure to come to an agreement, the parties gave mutual security for their appearance in court. After several delays, Naevius appeared at the time appointed. He then stated that he himself had held an auction in Gaul and had sold sufficient property to satisfy all his claims on the partnership; that there was no longer any reason for him to summon Publius to appear again, but that, if Publius wanted to bring an action against him, he offered no objection. Publius, who was anxious to see how things were going on in Gaul, also renounced the idea of a *vadimonium* (see on § 22), and the parties separated without any agreement to appear in court having been made.

After remaining about thirty days in Rome, Publius set out for Gaul on January 29, 83 B.C. (see § 24). On the way there, accompanied by a friend Lucius Albius, he was seen at Vada Volaterrana by a friend of Naevius, a certain Publicius, who was bringing him some slaves from Gaul to sell. Naevius, having been

informed of Publius's whereabouts, sent round to his friends and former colleagues, inviting them to meet him at the *tabula Sextia* (a banker's counter) at the second hour of the following day. A large number of them responded to the invitation. Naevius called upon them to bear witness that he had appeared on the appointed day but that Publius had not, although, according to Cicero, neither of them was bound to appear. An affidavit was drawn up in full and signed and sealed by the persons of rank present. Naevius then obtained the authority of the praetor Burrienus to take possession of Publius's estate in accordance with his edict, and publicly advertised his goods for sale. Sextus Alfenus, Publius's agent or attorney (*procurator*), and also a friend and kinsman of Naevius, pulled down the notices of sale, rescued a slave on whom Naevius had laid hands, notified that he was Publius's agent, and expressed his opinion that in fairness Naevius ought to wait until Publius returned. If he refused, Alfenus said that he was ready to undertake the defence of Publius in court, if Naevius wished to bring an action.

In Gaul, in the meantime, on February 23, a few days after his arrival, Publius was ejected from the pastures and farm-lands by slaves belonging to the partners in common. He thereupon appealed to Flaccus, the governor of the province, who happened to be there at the time. Flaccus strongly expressed his disapproval of Naevius's action, probably because the owner of the property had been ejected against his will, but nothing is known of any orders issued by him or of their results.

In Rome, Alfenus continued his resistance to Naevius. The latter demanded that Alfenus should

give security for the payment of the judgement if the decision went against him. Alfenus, on the other hand, maintained that it was unfair that an agent should have to give security which his principal, if present, would not be obliged to give. As the result of an appeal to the tribunes, it was settled that Alfenus should promise that Publius would present himself on September 13. He returns and appears to his bail. For eighteen months Naevius makes no claim upon Publius, but keeps him in suspense with various proposals. At last he demands from the praetor Dolabella that Publius should give him security for payment of the judgement in accordance with the formula "since he is claiming from one whose goods have been possessed for thirty days in accordance with the praetor's edict."[a] This seems to show that Naevius was going to bring some action against Publius, perhaps for a sum of money or on some matter connected with the partnership. Publius offered no objection, if the goods had really been possessed in accordance with the edict. Nevertheless the praetor decided that Publius and Naevius should enter into a *sponsio* (a kind of legal wager or stipulation) that the latter should pay a nominal sum

[a] "Quod ab eo petat, quoius ex edicto praetoris bona dies xxx possessa sunt," § 30. When the praetor gave a creditor permission to seize a debtor's property (*missio in possessionem*), the order was executed at the petitioner's risk ("praetor non fieri, sed ex edicto suo fieri iubebat," § 60). When an order was made that the debtor's goods should be sold, they were to be kept in possession and notices posted for thirty successive days, until the expiration of which nothing could be done. The creditor took possession as a precautionary measure, in order to save the property (see also note on § 85).

"if it appeared that the goods had *not* been possessed for thirty days in accordance with the edict of Publius Burrienus the praetor." Publius's friends objected to this, maintaining that a judicial verdict ought to be given on the matter; that either both or neither should give security; that there was no need to imperil the good name of one of the parties. Publius himself was unwilling to give security, lest by doing so he might seem to confirm the judgement that his goods had been possessed in accordance with the edict; further, that if he undertook to enter into a wager of that kind, he would be obliged, in a matter which affected his civil status and political privileges, to speak before his opponent and thereby take the part of plaintiff. But Dolabella persisted, and Publius chose what seemed to him the lesser of two evils and accepted the *sponsio*, since he might have something to hope for from a fair judicial trial and verdict.

The case is one which was known as *praeiudicialis*, that is, one in which certain things had to be determined before the chief matter could be tried. Its object was to ascertain certain facts, and the judge's decision formed the basis of subsequent litigation. Here the points to be examined are those arising out of the *sponsio* and deal with the question of possession. Cicero asserts that Naevius has not possessed Publius's goods in accordance with the edict, and undertakes to prove this by the *sponsio*. What he desires to prove is succinctly stated in ch. x., where he divides his defence into three parts: "We deny that you have taken possession of the goods of Publius Quinctius in accordance with the praetor's edict." That is the question in regard to which the *sponsio* was made.

Cicero says that he will prove : (1) that Naevius had no grounds for applying to the praetor to authorize him to take possession of the goods ; (2) that he could not have possessed them in accordance with the edict ; (3) that he did not possess them at all.

(1) Naevius had no grounds for applying to the praetor, since Publius owed him nothing either as a partner or as a private individual ; and if he asserts that Gaius did owe him a considerable sum which his heir would have to pay, why did he wait for two years before he mentioned the debt, although he lived with Publius and had plenty of opportunities for making a claim ? His previous acts also support this. If he had had a good claim, he could have brought an action or tried some simpler way than one dangerous and dishonourable to himself, and most injurious to the reputation and civil status of Publius. Even if money was owing to him, he could not at once have applied to the praetor to grant him a writ of possession ; for, even assuming that Publius had forfeited his recognizances, it was unfair to proceed at once to extremes against him. But in reality there was no *vadimonium* at all. Naevius, in answer to Publius, said it had been concluded on February 5, but, as can be proved, on that day he was not in Rome at all.

(2) Naevius could not have possessed the goods in accordance with the praetor's edict, because none of the conditions justifying such a course, as stated in the edict, were applicable to Publius.

(3) Naevius anticipated the writ, which was applied for on February 20, whereas Publius had been ejected from his property on February 23, when the writ could not possibly have arrived, unless a messenger from

Naevius could have covered the distance (700 miles) from Rome to the Gallic estate in two days! Further, the only possession recognized by the edict was a universal one, whereas Naevius had made no attempt to gain possession of Publius's house and slaves at Rome and his private landed property in Gaul.

Then too the edict expressly declared that an owner must not be forcibly ejected from his property and that Publius and Naevius should be allowed to have possession in common.

The peroration compares the insolence and good fortune of Naevius with the miserable condition of the unhappy Publius, and ends with an appeal to justice and the sympathy of the judge and his assessors.

Gaius Aquilius Gallus was the judge, his assessors being P. Quinctilius Varus, M. Claudius Marcellus, and L. Lucilius Balbus. Naevius had for his advocate the celebrated Hortensius (Quintus H. Hortalus), assisted by L. Marcius Philippus. The result of the trial is unknown.

A full discussion of Cicero's arguments and the speech generally will be found in H. J. Roby, *Roman Private Law*, ii. pp. 453-485, some points from which have been mentioned in the notes. See also A. H. Greenidge, *The Legal Procedure of Cicero's Time*, Appendix I. (1901), and the Introduction in Long's edition.

INTRODUCTION

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Pro Quinctio: F. L. Keller, *Semestrium ad M. Tullii Ciceronis libri sex*, i. (Zürich, 1842); J. Frei, *Der Rechtsstreit zwischen P. Q. und S. N.* (Zürich, 1852); R. Klotz, *Adnotationes ad M. T. C. orationem Quinctianam* (Leipzig, 1862); W. Oetling, *Ciceros Quinctiana* (Oldenburg, 1882); E. Costa, *Le orazioni di diritto privato di Cicerone* (Bologna, 1899).

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PRO PUBLIO QUINCTIO

1 I. Quae res in civitate duae plurimum possunt, eae contra nos ambae faciunt in hoc tempore, summa gratia et eloquentia; quarum alteram, C. Aquili, vereor, alteram metuo. Eloquentia Q. Hortensi ne me in dicendo impediat, non nihil commoveor, gratia Sex. Naevi ne P. Quinctio noceat, id vero non medio-
2 criter pertimesco. Neque hoc tanto opere querendum videretur, haec summa in illis esse, si in nobis essent saltem mediocria; verum ita se res habet, ut ego, qui neque usu satis et ingenio parum possum, cum patrono disertissimo comparer, P. Quinctius, cui tenues opes, nullae facultates, exiguae amicorum copiae sunt, cum adversario gratiosissimo contendat.
3 Illud quoque nobis accedit incommodum, quod M. Iunius, qui hanc causam, C. Aquili,[1] aliquotiens apud

[1] causam, C. Aquili *are inserted by Angelius* (causam) *and Klotz* (C. Aquili).

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[a] Gaius Aquilius Gallus was a well-known jurist and a pupil of Q. Mucius Scaevola. He is highly praised by Cicero (*Pro Caecina*, xxvii. 77), with whom he was praetor in 66. He is often cited in the Digest, published certain formulae, and was also one of the judges in the trial of Caecina.

[b] Hortensius (Quintus H. Hortalus, 114–50 B.C.), the famous advocate and rival of Cicero. In the civil war he joined Sulla and strongly supported the aristocratical party,

IN DEFENCE OF PUBLIUS QUINCTIUS

I. Two things which have most power in the state 1
—I mean great influence and eloquence—are both working against us to-day; the one, Gaius Aquilius,[a] fills me with apprehension, the other with dread. That the eloquence of Quintus Hortensius[b] may embarrass me in my pleading is a thought that causes me some disquietude; that the influence of Sextus Naevius may injure the cause of Publius Quinctius—of that I am gravely afraid. Yet I should 2
not consider the possession of these advantages in so high a degree by my opponents to be so greatly deplored, if we possessed at least a moderate share of either; but the position is such that I, who have little natural ability and insufficient experience, am pitted against a most accomplished advocate, while my client Quinctius, whose resources are small, who has no opportunities and only a few friends, has to contend with a most influential adversary. An additional disadvantage for 3
us is that Marcus Junius, who has several times pleaded this cause before you, Aquilius, who has had

members of which he frequently defended, *e.g.* Verres when accused by Cicero. When the latter went over to the senatorial party, they often acted together. Hortensius was a master of the florid or Asianic style, and wrote a treatise on commonplaces, besides Annales and poems.

te egit, homo et in aliis causis exercitatus et in hac multum et saepe versatus, hoc tempore abest nova legatione impeditus, et ad me ventum est, qui ut summa haberem cetera, temporis quidem certe vix satis habui, ut rem tantam, tot controversiis impli-
4 catam, possem cognoscere. Ita, quod mihi consuevit in ceteris causis esse adiumento, id quoque in hac causa deficit. Nam, quod minus ingenio possum, subsidium mihi diligentia comparavi[1]; quae quanta sit, nisi tempus et spatium datum sit, intellegi non potest. Quae quo plura sunt, C. Aquili, eo te et hos, qui tibi in consilio sunt, meliore mente nostra verba audire oportebit, ut multis incommodis veritas debilitata tandem aequitate talium virorum recreetur.
5 Quodsi tu iudex nullo praesidio fuisse videbere contra vim et gratiam solitudini atque inopiae, si apud hoc consilium ex opibus, non ex veritate causa pendetur, profecto nihil est iam sanctum atque sincerum in civitate, nihil, quod humilitatem cuiusquam gravitas et virtus iudicis consoletur. Certe aut apud te et hos, qui tibi adsunt, veritas valebit aut ex hoc loco repulsa vi et gratia locum, ubi consistat, reperire non poterit.

II. Non eo dico, C. Aquili, quo mihi veniat in dubium tua fides et constantia, aut quo non in his, quos tibi advocasti, viris lectissimis civitatis spem summam habere P. Quinctius debeat. Quid ergo

[1] subsidio mihi diligentiam comparavi *MSS.*: subsidium . . . diligentia (*Quintilian*, Inst. Orat. xi. 1. 19).

[a] It is not certain who Junius was, nor is anything known of this legation or commission.

[b] Or, "it is difficult to see what results (how much industry) can be expected." Cicero means that in this case he has little chance of showing his industry.

[c] These assessors or assistants (*qui tibi in consilio sunt*) were chosen by the judge himself and formed his *consilium*.

great experience at the bar, and has given great and frequent attention to this cause in particular, is prevented by a new commission from being present to-day.[a] So then I was applied to—I who, even if I possessed all other qualifications in the highest degree, have scarcely had time enough to make myself acquainted with a matter of such importance and one involving so many disputed points. Thus 4
what has generally been a help to me in other causes also fails me in this. For I have always supplemented my lack of ability by taking careful pains, and how great my industry is, unless one has time and leisure, cannot be perceived.[b]

The more numerous these disadvantages are, Aquilius, the greater should be the indulgence with which you and your assessors[c] listen to our words, so that truth, weakened by so many unfavourable conditions, may at last be revived by the impartiality of men so eminent. But if you, in your capacity as 5
judge, show that you can afford no protection to loneliness and distress against violence and interest; if, before such a tribunal, the cause is weighed in the balance of influence and not in that of truth, then assuredly neither sanctity nor purity any longer exists in the state, nor can the authority and integrity of the judge afford any consolation to a humble citizen. No doubt either truth will prevail before you and your assessors, or, driven by violence and interest from this tribunal, will be unable to find a place wherein to rest.

II. If I use such language, Aquilius, it is not that I have any doubt of your firmness and integrity, or as if Quinctius ought not to have the highest confidence in these distinguished citizens whom you have summoned to be your assessors. What then is it that

6 est? Primum magnitudo periculi summo timore
hominem afficit, quod uno iudicio de fortunis omnibus decernit, idque dum cogitat, non minus saepe
ei venit in mentem potestatis quam aequitatis tuae,
propterea quod omnes, quorum in alterius manu vita
posita est, saepius illud cogitant, quid possit is, cuius
in dicione ac potestate sunt, quam quid debeat
7 facere. Deinde habet adversarium P. Quinctius
verbo Sex. Naevium, re vera huiusce aetatis homines
disertissimos, fortissimos, florentissimos nostrae civitatis, qui communi studio summis opibus Sex.
Naevium defendunt, si id est defendere, cupiditati
alterius obtemperare, quo is facilius, quem velit,
8 iniquo iudicio opprimere possit. Nam quid hoc
iniquius aut indignius, C. Aquili, dici aut commemorari potest, quam me, qui caput alterius, famam fortunasque defendam, priore loco causam dicere? cum
praesertim Q. Hortensius, qui in hoc iudicio partes
accusatoris obtinet, contra me sit dicturus, cui summam copiam facultatemque dicendi natura largita est.
Ita fit, ut ego, qui tela depellere et vulneribus mederi
debeam, tum id facere cogar, cum etiam telum adversarius nullum iecerit, illis autem id tempus impugnandi detur, cum et vitandi illorum impetus potestas
adempta nobis erit et, si qua in re, id quod parati
sunt facere, falsum crimen quasi venenatum aliquod
telum iecerint, medicinae faciendae locus non erit.

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[a] *Caput* often does not mean literally "life" here and elsewhere in this speech, but a man's civil and political rights, which would be lost by *infamia*, if judgement were given against him and his goods sold (the important point).

[b] *i.e.* before we have heard the exact charge; see § 33.

[c] Hortensius was defending Naevius, so Cicero has on right to call him an *accusator*. *In* is inserted by Baiter.

troubles us? In the first place, his great peril 6
inspires my client with the greatest alarm, since he
is staking all his fortunes on the issue of a single
judgement; and when he reflects upon that, the idea
of your power comes into his mind as often as that of
your sense of justice; for, as a rule, all those whose
life is in the hands of another think more often of
what the man in whose absolute power they are is able
to do than of what he ought to do. In the next place, 7
Quinctius has for his opponent nominally Naevius, but
in reality the most accomplished men of our time,
the bravest and most prosperous of our citizens, who
with united efforts and vast resources are defending
Naevius, if to subserve the cupidity of one of the
parties in order that he may be able the more easily
to overwhelm anyone he chooses by an iniquitous
trial—if that can be called defending. For can any- 8
thing more iniquitous or more scandalous be spoken
of or mentioned, Gaius Aquilius, than the fact that I,
who am defending the civil rights,[a] the good name and
fortunes of the other party, should have to plead my
cause first,[b] above all, when Hortensius, who in this
trial fills the part of an accuser,[c] upon whom nature
has lavishly bestowed a wealth of language and the
greatest eloquence, is going to speak against me?
Thus it comes to pass that I, whose duty it is to repel
the darts of the enemy and to heal the wounds inflicted by them, am compelled to perform this task,
even before my adversaries have launched a single
dart, while they have the time granted them for
making an attack when we shall have been deprived of
the power of avoiding their assault, and when, if they
launch some false charge, as they are ready to do, we
shall have no opportunity of applying an antidote. This 9

9 Id accidit praetoris iniquitate et iniuria, primum quod contra omnium consuetudinem iudicium prius de probro quam de re maluit fieri, deinde quod ita constituit id ipsum iudicium, ut reus, antequam verbum accusatoris audisset, causam dicere cogeretur. Quod eorum gratia et potentia factum est, qui, quasi sua res aut honos agatur, ita diligenter Sex. Naevi studio et cupiditati morem gerunt et in eius modi rebus opes suas experiuntur, in quibus, quo plus propter virtutem nobilitatemque possunt, eo minus, quantum possint, debent ostendere.

10 Cum tot tantisque difficultatibus affectus atque afflictus in tuam, C. Aquili, fidem, veritatem, misericordiam P. Quinctius confugerit, cum adhuc ei propter vim adversariorum non ius par, non agendi potestas eadem, non magistratus aequus reperiri potuerit, cum ei summam per iniuriam omnia inimica atque infesta fuerint, te, C. Aquili, vosque, qui in consilio adestis, orat atque obsecrat, ut multis iniuriis iactatam atque agitatam aequitatem in hoc tandem loco consistere et confirmari patiamini. III. Id quo facilius facere possitis, dabo operam, ut, a principio res quem ad modum gesta et contracta sit, cognoscatis.

11 C. Quinctius fuit P. Quincti huius frater, sane ceterarum rerum pater familias et prudens et attentus, una in re paulo minus consideratus, qui societatem cum Sex. Naevio fecerit, viro bono, verum tamen non

[a] His alleged (according to Cicero) non-appearance to his bail, involving *infamia*.

is due to the unfairness and injustice of the praetor; in the first place because, contrary to all precedent, he has preferred that the trial should deal with my client's dishonour [a] before the fact at issue; in the second place, because he has so arranged the course of procedure that the accused should be forced to plead his cause before he has heard a single word from the accuser. This is the result of the power and influence of those men who support the passionate desires of Naevius as zealously as if their own interests or honour were at stake, and test their resources in matters in which, the greater the power they possess owing to their merit and rank, the less ought they to show how great it is.

Weighed down and overwhelmed by so many and 10
such great difficulties, Quinctius has taken refuge in your integrity, uprightness, and compassion. Since until now the power of his opponents has prevented him from enjoying the same legal rights as theirs, from obtaining the same facilities for pleading, from finding an impartial magistrate; since, by the greatest injustice of all, everything is unfavourable and hostile to him, he begs and prays you, Aquilius, and you his assessors, to allow equity, driven about and persecuted by many acts of injustice, to find rest and support at last in this tribunal. III. And to enable you to do this more easily, I will endeavour to make you acquainted with the origin, progress, and conduct of the matter.

Publius Quinctius, my client, had a brother 11
named Gaius, undoubtedly a careful and industrious manager of an estate in every respect except one. He showed rather less caution than usual in entering into partnership with Naevius, a worthy man I dare

ita instituto, ut iura societatis et officia certi patris familias nosse posset; non quo ei deesset ingenium; nam neque parum facetus scurra Sex. Naevius neque inhumanus praeco est umquam existimatus. Quid ergo est? Cum ei natura nihil melius quam vocem dedisset, pater nihil praeter libertatem reliquisset, vocem in quaestum contulit, libertate usus est, quo
12 impunius dicax esset. Quare quidem socium tibi eum velles adiungere, nihil erat, nisi ut in tua pecunia condisceret, qui pecuniae fructus esset; tamen inductus consuetudine ac familiaritate Quinctius fecit, ut dixi, societatem earum rerum, quae in Gallia comparabantur. Erat ei pecuaria res ampla et rustica sane bene culta et fructuosa. Tollitur ab atriis Liciniis atque a praeconum consessu in Galliam Naevius et trans Alpes usque transfertur. Fit magna mutatio loci, non ingenii. Nam qui ab adulescentulo quaestum sibi instituisset sine impendio, posteaquam nescio quid impendit et in commune contulit,
13 mediocri quaestu contentus esse non poterat. Nec mirum, si is, qui vocem venalem habuerat, ea, quae voce quaesiverat, magno sibi quaestui fore putabat.

[a] *Praeco*, literally a crier in a court of justice, at public games, at auctions (where he called out the conditions of sale), and the like. The word *scurra* originally meant a fine gentleman of distinguished manners, opposed to a rustic; an idler, acquainted with all the gossip. In Cicero's time it means a professional wit or buffoon. Then, when it became customary for the great men of Rome to have one of these people at table to amuse their guests, the name was used for a parasite, who let himself out for a dinner and entertained them with gross flattery, small talk, and various tricks. Socrates was called *scurra Atticus* by Zeno, and dissipated men about town *scurrae* in *Pro Sestio* xvii. § 39.

say, but one who had not been brought up in such a manner as to give him the opportunity of becoming acquainted with the rights of a partnership and the duties of a trustworthy manager; not that he did not possess a certain talent, for he was never regarded as a buffoon who lacked humour or as an unmannerly auctioneer.[a] How then does the matter stand? Since nature had endowed him with nothing better than a good voice, and his father had left him nothing but his freedom, he made his voice a considerable source of gain, and used his freedom to utter his witticisms with greater impunity. The only reason why you 12
could have wanted to take him into partnership must have been to afford him the opportunity, in handling your money, of thoroughly learning what was the value of it. However, Quinctius, being acquainted with and familiar with the man, was induced to admit him, as I have said, into a partnership in his business in Gaul, where he had a considerable grazing farm, well cultivated and very productive. Naevius is removed from the Licinian auction-halls[b] and the company of auctioneers, and transported across the Alps to Gaul. A great change of place but not of character! For the man who from early youth had made a practice of getting money for himself without any capital, after he had put a certain bit of capital into the partnership, could not rest contented with a moderate profit. Nor is it to be wondered at if he, 13
who had let out his voice on hire, thought that what he had acquired by it would bring him great profit.

[b] Besides being the name of part of a house, *atrium* was also a court surrounded by a colonnade and the halls where auctions were held. The *atria Licinia* were named after L. Licinius Crassus, the orator.

Itaque hercule haud mediocriter de communi, quodcumque poterat, ad se in privatam domum sevocabat; qua in re ita diligens erat, quasi ii, qui magna fide societatem gererent, arbitrium pro socio[1] condemnari solerent. Verum his de rebus non necesse habeo dicere ea, quae me P. Quinctius cupit commemorare; tametsi causa postulat, tamen, quia postulat, non flagitat, praeteribo.

14 IV. Cum annos iam complures societas esset, et cum saepe suspectus Quinctio Naevius fuisset neque ita commode posset rationem reddere earum rerum, quas libidine, non ratione gesserat, moritur in Gallia Quinctius, cum adesset Naevius, et moritur repentino. Heredem testamento reliquit hunc P. Quinctium, ut, ad quem summus maeror morte sua veniebat, ad
15 eundem summus honos quoque perveniret. Quo mortuo, nec ita multo post, in Galliam proficiscitur Quinctius, ibi cum isto Naevio familiariter vivit. Annum fere una sunt, cum et de societate multa inter

[1] *According to some* arbitrium *is a gloss*: arbitrio *Hotman*: ad arbitrium *Manutius*: per arbitrum *Landgraf*.

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[a] So Naevius, to avoid such a thing happening, was careful to cheat his partner. Prof. H. Morgan (*Harvard Studies in Classical Philology*, xii., 1901) rejects this generally accepted interpretation: "Long's explanation renders *arbitrium* useless and some older editors omitted it. But *condemnare* with double accusative is common in legal language. The punishment (*arbitrium*) is kept with the passive, and the meaning is: As if men who acted as honest partners were usually condemned to *arbitrium pro socio*, that is, had

Accordingly, by Hercules! he withdrew from the common stock whatever he could (no small sum) and put it into his own pocket; and in this he displayed as much activity as if those who carried on a partnership with the greatest honesty were, should any question about the partnership come before an arbitrator, regularly condemned.[a] But I do not think it necessary to mention in regard to these matters certain facts which my client desires me to recall; although the cause asks for them, still, because it only asks and does not absolutely demand, I will pass them over.

IV. After the partnership had lasted for several 14
years, Naevius had more than once been suspected by Gaius Quinctius, since he was unable to render a satisfactory account of certain transactions which he had carried on as he thought fit and not in accordance with the rules of business. In the meantime Gaius Quinctius dies in Gaul, while Naevius was there; his death was sudden.[b] By his will he left his brother Publius, my client, his heir, desiring that he who felt the bitterest sorrow at his death might also receive the highest proof of his esteem.[c] Soon after his brother's 15
death Quinctius set out for Gaul, where he lived on the most friendly terms with this fellow Naevius. They were together nearly a year, during which time

to go before an arbitrator on a question of defrauding a partner. *Pro socio* is the legal phraseology for: in a partnership question." He compares *Pro Roscio Comoedo*, x. 25 "Quae cum ita sint, cur non arbitrium pro socio adegeris Q. Roscium quaero."

[b] This seems intended to create the suspicion that Naevius had something to do with his death.

[c] It was considered a mark of respect to be mentioned in a friend or relative's will and a great slight if one's name were omitted. The emperor Augustus was very touchy on this point.

se communicarent et de tota illa ratione atque re Gallicana; neque interea verbum ullum interposuit Naevius aut societatem sibi quidpiam debere, aut privatim Quinctium debuisse. Cum aeris alieni aliquantum esset relictum, quibus nominibus pecuniam Romae curari oporteret, auctionem in Gallia P. hic Quinctius Narbone se facturum esse proscribit earum
16 rerum, quae ipsius erant privatae. Ibi tum vir optimus Sex. Naevius hominem multis verbis deterret, ne auctionetur; eum non ita commode posse eo tempore, quo proscripsisset, vendere; Romae sibi nummorum facultatem esse, quam, si saperet, communem existimaret pro fraterna illa necessitudine et pro ipsius affinitate; nam P. Quincti consobrinam habet in matrimonio Naevius et ex ea liberos. Quia, quod virum bonum facere oportebat, id loquebatur Naevius, credidit Quinctius eum, qui orationem bonorum imitaretur, facta quoque imitaturum; auctionem velle facere desistit, Romam proficiscitur; de-
17 cedit ex Gallia Romam simul Naevius. Cum pecuniam C. Quinctius P. Scapulae debuisset, per te, C. Aquili, decidit P. Quinctius, quid liberis eius dissolveret. Hoc eo per te agebatur, quod propter aerariam rationem

[a] *Communicare* is a legal term meaning to share with others; and this may be intended here, with reference to a

they had several discussions[a] both about the partnership and everything connected with the management of the farm and the property in Gaul. In the meantime, Naevius never put in a word to the effect that either the partnership owed him anything or that Quinctius was personally indebted to him. Since a certain number of debts had been left unpaid which had to be settled at Rome, my client had a notice put up in Gaul that he would sell some private property
of his at Narbo.[b] Then it was that this excellent man 16
Naevius endeavoured, at great length, to dissuade him from making the sale. He told him that the date he had fixed was not a favourable one for selling; that he himself had plenty of money at Rome, which my client, if he had any sense, ought to look upon as belonging to both, considering his intimacy with his late brother and his relationship to himself, Naevius having married a cousin of Quinctius by whom he had children. Because Naevius spoke of what an honest man ought to do, Quinctius believed that one who imitated the language of honest men would also imitate their actions. He abandoned the idea of making the sale and set out for Rome. Naevius did the
same. Since Gaius was indebted to Publius Scapula,[c] 17
his brother Publius, according to your decision, Aquilius, settled how much he had to pay to Scapula's children. The question had to be settled by you,

division of what remained of the old stock to form a new partnership, since the one between Gaius and Naevius was ended by the death of the former.

[b] Narbo Martius (mod. Narbonne), capital of Gallia Narbonensis and the first Roman colony in Gaul. It was connected by a canal with the sea, was a flourishing town, and a centre for the transport of tin from Spain and Britain.

[c] Supposed to have been a money-lender.

non satis erat in tabulis inspexisse, quantum deberetur, nisi ad Castoris quaesisses, quantum solveretur. Decidis statuisque tu propter necessitudinem, quae tibi cum Scapulis est, quid iis ad denarium solveretur.

18 V. Haec omnia Quinctius agebat auctore et consuasore Naevio. Nec mirum, si eius utebatur consilio, cuius auxilium sibi paratum putabat; non modo enim pollicitus erat in Gallia, sed Romae cotidie, simul atque sibi hic annuisset, numeraturum se dicebat. Quinctius porro istum posse facere videbat, debere intellegebat, mentiri, quia causa, cur mentiretur, non erat, non putabat; quasi domi nummos haberet, ita constituit Scapulis se daturum; Naevium

19 certiorem facit, rogat, ut curet, quod dixisset. Tum iste vir optimus (vereor, ne se derideri putet, quod iterum iam dico "optimus"), qui hunc in summas angustias adductum putaret, ut eum suis condicionibus in ipso articulo temporis adstringeret, assem sese negat daturum, nisi prius de rebus rationibusque

[a] Various explanations have been given of this much-discussed phrase (*propter aerariam rationem*): (1) that the difference between Gallic and Roman money is meant, the debt having been incurred in Gaul and being payable in Rome, where the rate of exchange was different; (2) that it alludes to the state of the currency. M. Drusus (in 91) authorized the mint to issue one plated *denarius* in every seven, the result being that no one knew whether his money was good or bad; later (in 84) the praetors and tribunes decided to replace the plated *denarii* by silver. (3) To this Niebuhr objected that *argentaria* (not *aeraria*) would be the proper word, and explains the passage as referring to the *lex Valeria* brought forward by the consul L. Valerius Flaccus (86). By this law all debts were cancelled and creditors only received a quarter of their debt (like our composition of 5s. in the £). Mommsen agrees and explains the process as the substitution in calculation of the reduced *as* ($\frac{1}{16}$ of a *denarius*) for the libral *as* represented by the silver

because, owing to the rate of exchange,[a] it was not enough to examine the account-books for the amount of the debt, but also you had to make inquiries near the temple of Castor[b] how much he had to pay. You settled the question, and, in consideration of your intimate friendship with the Scapulae, decided how much ought to be paid to them reckoning in *denarii*.[c]

V. All this took place at the suggestion and on the 18
urgent advice of Naevius. Nor was it surprising that Quinctius took the advice of a man of whose assistance he felt assured; for Naevius had promised him not only in Gaul, but every day in Rome, that he would pay down the money as soon as Quinctius had given him a hint. Moreover, Quinctius knew that he was able to pay and felt that he ought to; he had no idea that he was telling him a lie, because there was no reason why he should do so. Accordingly, as if he had the money at home, he entered into a formal engagement to pay the Scapulae,[d] informed Naevius, and asked him to see about getting the money, as he had
promised. Then that excellent man—I am afraid he 19
may think he is being laughed at because I call him "excellent" for the second time—thought that Quinctius was reduced to the greatest straits, so that he could tie him down at the critical moment on his own terms. He refused to advance Quinctius a penny until a

sestertius. According to Niebuhr, the law only applied to debts owing at the time, whence the difficulty of settling the amount of the debt to the Scapulae (see Roby, *Roman Private Law*, ii. p. 456).

[b] The bankers' counting-houses were near the temple of Castor in the Forum.

[c] Or, how much should be deducted from the debt for each *denarius* paid.

[d] *Constituere* is a technical term, meaning to make a definite arrangement to pay a definite sum on a definite day.

societatis omnibus decidisset et scisset sibi cum Quinctio controversiae nihil futurum. "Posterius," inquit, "ista videbimus," Quinctius; "nunc hoc velim cures, si tibi videtur, quod dixisti." Negat se alia ratione facturum; quod promisisset, non plus sua referre, quam si, cum auctionem[1] venderet,
20 domini iussu quidpiam promisisset. Destitutione illa perculsus Quinctius a Scapulis paucos dies aufert, in Galliam mittit, ut ea, quae proscripserat, venirent, deteriore tempore absens auctionatur, Scapulis difficiliore condicione dissolvit. Tum appellat ultro Naevium, ut, quoniam suspicaretur aliqua de re fore controversiam, videret, ut quam primum et quam
21 minima cum molestia tota res transigeretur. Dat iste amicum M. Trebellium, nos communem necessarium, qui istius domi erat eductus, et quo utebatur iste plurimum, propinquum nostrum, Sex. Alfenum. Res convenire nullo modo poterat, propterea quod hic mediocrem iacturam facere cupiebat, iste medio-
22 cri praeda contentus non erat. Itaque ex eo tempore res esse in vadimonium coepit. Cum vadimonia saepe dilata essent, et cum aliquantum temporis in ea re esset consumptum neque quicquam profectum esset, venit ad vadimonium Naevius.

[1] auctione *Hotman.*

[a] *Esse in vadimonium coepit*: literally, "the matter came to giving bail." When proceedings *in iure* (before a praetor or other magistrate who possessed jurisdiction) were not finished on the same day, the parties agreed upon a time when they should appear again, and this agreement was called *vadimonium* (that is, a guarantee that they would appear in court on the appointed day). A sum of money of varying amount (but never exceeding 100,000 sesterces) had to be paid by one who failed to appear, called *poena desertionis.*

settlement had been arranged in regard to all the affairs and accounts of the partnership, and he felt assured that no cause of dispute would arise between them. "Let us see about that later," said Quinctius; "for the present, if you will be so kind, I should be glad if you would see about getting the money, as you promised." Naevius declared that he would only do so on his own terms, saying that his promise had no more to do with him than any other promise that he had made when selling goods by auction, by the
owner's orders. Quinctius, thoroughly upset by such 20
a disappointment, obtains a few days' grace from the Scapulae and sends to Gaul to have the goods sold as he had previously advertised; the auction takes place during his absence at an unfavourable time, and he pays off the Scapulae on less favourable terms than he had previously arranged. He then of his own accord appeals to Naevius, asking him, since he suspected there might be a dispute about something or other, to see about getting the whole affair settled as
soon as possible and with the least trouble. Naevius 21
appoints his friend Marcus Trebellius to represent him; we appoint a man connected by common ties with both parties, a man who had been brought up in Naevius's house and was an intimate friend of his, a relative of ours, Sextus Alfenus. No arrangement was possible, because my client wished to suffer only a moderate loss, while Naevius was not content with
a moderate booty. And so from that time the matter 22
had to be settled in the courts.[a] After several appointments had been made and adjourned, involving considerable loss of time without any result, Naevius appeared in court.

VI. Obsecro, C. Aquili vosque, qui adestis in consilio, ut diligenter attendatis, ut singulare genus fraudis et novam rationem insidiarum cognoscere
23 possitis. Ait se auctionatum esse in Gallia; quod sibi videretur, se vendidisse; curasse, ne quid sibi societas deberet; se iam neque vadari amplius neque vadimonium promittere; si quid agere secum velit Quinctius, non recusare. Hic cum rem Gallicanam cuperet revisere, hominem in praesentia non vadatur; ita sine vadimonio disceditur. Deinde Romae dies xxx fere Quinctius commoratur; cum ceteris quae habebat vadimonia, differt, ut expeditus in Galliam proficisci
24 posset; proficiscitur. Roma egreditur ante diem II[1] Kalend. Februarias Quinctius Scipione et Norbano coss. Quaeso, ut eum diem memoriae mandetis. L. Albius Sex. filius Quirina, vir bonus et cum primis honestus, una profectus est. Cum venissent ad Vada Volaterrana quae nominantur, vident perfamiliarem Naevi, qui ex Gallia pueros venales isti adducebat, L. Publicium; qui, ut Romam venit, narrat Naevio, quo in loco viderit Quinctium. Quod nisi ex Publicio narratum Naevio esset, non tam cito res in contentionem
25 venisset. Tum Naevius pueros circum amicos dimittit, ipse suos necessarios ab atriis Liciniis et a faucibus macelli corrogat, ut ad tabulam Sextiam sibi adsint

[1] ante diem IV *MSS.*; *cp.* § 57.

[a] Literally, put off appearances in court.
[b] In 83 B.C. (see § 57).
[c] A seaport in the territory of Volaterrae in Etruria (mod. Torre di Vado).
[d] The words in the text from *narratum* to *Naevius* are omitted by many, who begin § 25 with "Quod ubi ex Publicio audivit, pueros . . ."
[e] Some banker, otherwise unknown.

VI. I beg you, Aquilius, and you his assessors, to give me your earnest attention, that you may be able to understand a remarkable kind of fraud and an entirely new method of trickery. Naevius next 23
declared that he had sold by auction in Gaul whatever he thought fit; that he had taken care that the partnership should not be indebted to him; that he no longer claimed that Quinctius should produce bail nor was he ready to promise bail to him; but if Quinctius wished to bring any action against him, he had no objection to make. Since Quinctius desired to pay another visit to his property in Gaul, for the present he did not bind Naevius over to appear; and they separated without any appointment for appearance in court having been made. Next, Quinctius remains in Rome about thirty days; he adjourned any suits[a] that he had with others, so that he might be able to set out for Gaul free from anxiety. He set out and 24
left Rome on January 27,[b] during the consulship of Scipio and Norbanus. I beg you to bear this date in mind. Lucius Albius, the son of Sextus, of the tribe of Quirinus, a worthy and especially honourable man, set out with him. After they had reached the fords of Volaterrae,[c] as they are called, they saw an intimate friend of Naevius, one Lucius Publicius, who was bringing him some slaves from Gaul for sale, and on his arrival at Rome told Naevius where he had seen Quinctius. Had not Naevius received this information from Publicius, the matter would not have been so soon a subject of dispute in court.[d] Then Naevius 25
sent his slaves round to all his friends, got together his acquaintances from the Licinian halls and the entrance to the market by his own efforts, and invited them to meet him at the counting-house of Sextius[e]

hora secunda postridie. Veniunt frequentes. Testificatur iste P. QUINCTIUM NON STITISSE ET STITISSE SE; tabulae maxime signis hominum nobilium consignantur, disceditur. Postulat a Burrieno praetore Naevius, ut ex edicto bona possidere liceat; iussit bona proscribi eius, quicum familiaritas fuerat, societas erat, affinitas liberis istius vivis divelli nullo
26 modo poterat. Qua ex re intellegi facile potuit nullum esse officium tam sanctum atque sollemne, quod non avaritia comminuere ac violare soleat. Etenim si veritate amicitia, fide societas, pietate propinquitas colitur, necesse est iste, qui amicum, socium, affinem fama ac fortunis spoliare conatus est, vanum se et perfidiosum et impium esse fateatur.
27 Libellos Sex. Alfenus, procurator P. Quincti, familiaris et propinquus Sex. Naevi, deicit, servulum unum, quem iste prehenderat, abducit, denuntiat sese procuratorem esse, istum aequum esse famae fortunisque P. Quincti consulere et adventum eius exspectare; quod si facere nolit atque imbiberit eius modi rationibus illum ad suas condiciones perducere, sese nihil precari et, si quid agere velit, iudicio defen-
28 dere. Haec dum Romae geruntur, Quinctius interea contra ius, consuetudinem, edicta praetorum de

[a] Or, reading *maximae* with some MSS., "a very bulky affidavit."

[b] On February 20: see § 79.

[c] *Procurator* was an agent appointed to act generally for an absent principal or in a particular suit. He had to give security that his principal would abide by the terms of the decision.

at the second hour of the following day. They attended in great numbers. Naevius called them to witness that "Publius Quinctius had not answered to his bail, and that he had answered"; an affidavit was signed in full[a] and bore the seal of the distinguished witnesses, after which the meeting broke up. Naevius then applied to the praetor[b] Burrienus for permission to take possession of the defaulter's estate in accordance with the edict. He ordered the goods of the man to be put up for sale, whose intimate friend he had been, whose partner he still was, and whose kinship by marriage was indissoluble as long as
Naevius's children still lived. This makes it easy to 26
understand that there is no duty so sacred and solemn that it cannot in most instances be impaired and violated by avarice. For if friendship is maintained by truth, partnership by good faith, and kinship by a sense of duty, the man who has attempted to rob his friend, his partner, his kinsman of his reputation and fortunes must admit that he is untrustworthy, per-
fidious, and undutiful. Alfenus, Quinctius's agent,[c] 27
the friend and relative of Naevius, tore down the bills of sale, carried off one young slave whom Naevius had seized, formally declared himself Quinctius's agent, and insisted that it was only right that Naevius should have regard for the reputation and fortunes of Quinctius and await his return to Rome; if he refused to do this and was determined to force him by such methods to accept his terms, he asked no favour, and if Naevius chose to bring an action,
he was ready to defend Quinctius in court. While 28
such was the course of events at Rome, in the meantime Quinctius, contrary to law, custom, and the edicts of praetors, was forcibly driven from the

saltu agroque communi a servis communibus vi detruditur.

VII. Existima, C. Aquili, modo et ratione omnia Romae Naevium fecisse, si hoc, quod per litteras istius in Gallia gestum est, recte atque ordine factum esse videtur. Expulsus atque eiectus e praedio Quinctius accepta insigni iniuria confugit ad C. Flaccum imperatorem, qui tum erat in provincia, quem, ut ipsius dignitas poscit, honoris gratia nomino. Is eam rem quam vehementer vindicandam putarit, ex decretis
29 eius poteritis cognoscere. Alfenus interea Romae cum isto gladiatore vetulo cotidie pugnabat; utebatur populo sane suo, propterea quod iste caput petere non desinebat. Iste postulat, ut procurator iudicatum solvi satis daret; negat Alfenus aequum esse procuratorem satis dare, quod reus satis dare non deberet, si ipse adesset. Appellantur tribuni; a quibus cum esset certum auxilium petitum, ita tum disceditur, ut idibus Septembribus P. Quinctium sisti Sex. Alfenus promitteret.

[a] Quinctius probably asked for an order that he might be put in possession of his property again, since he had been ejected by force. Such an order was called *Interdictum de Vi*. Flaccus expressed his strong disapproval of Naevius's action and issued some orders, but it is not known what they were or what was the result. C. Valerius Flaccus (consul 93) gained victories over the Gauls and the Celtiberi in Spain. He was a partisan of Sulla.

[b] "The head" is really the civic status of Quinctius; see § 8.

[c] This reply of Alfenus is difficult to explain and could hardly have been made in later times. It would seem that in Cicero's time the necessity for security in the representation by a *procurator* admitted of exceptions, and at this time was not absolute. Perhaps Alfenus may have contended that there was no need for security, since Naevius claimed to be already in possession of all Quinctius's estate (Roby). Or he may have been afraid of doing harm to Quinctius by

common pastures and land by slaves belonging to the partners.

VII. If what Naevius did in Gaul by written instructions appears to you to have been correct and regular, then you must think that all that he did in Rome was moderate and reasonable. Quinctius, expelled and driven out of his estate, having been subjected to such flagrant injustice, had recourse to Gaius Flaccus the governor, who was at that time in the province, and whom, as his rank demands, I mention with the respect due to his office.[a] How severely he thought such a course of action ought to be punished, you will be able to learn from his decrees.
In the meantime at Rome Alfenus was fighting daily 29
with this veteran gladiator; the people, no doubt, he had on his side, because his opponent continued to aim at the head.[b] Naevius makes a formal application that the agent should give security for payment of the award if Quinctius lost his case. Alfenus says it was not fair that an agent should give security, which the defendant would not have to give if he were present in person.[c] Thereupon Alfenus appeals to the tribunes[d]; and, after definite assistance had been asked from them, they separated on this occasion, on Alfenus promising that Quinctius should appear in court on September 13.

giving a security which might be taken to mean not such as was required from a *procurator* but demanded from a defendant, in the *actio iudicati* (in the proceedings on the judgement).

[d] The appeal was against the writ of possession. The praetor seems to have let it be known that, as Alfenus had refused to give the security required, he would make an order in favour of Naevius keeping possession of Quinctius's property and authorize him to proceed to a sale.

30 VIII. Venit Romam Quinctius, vadimonium sistit. Iste, homo acerrimus, bonorum possessor, expulsor, ereptor, annum et sex menses nihil petit, quiescit, condicionibus hunc, quod potest, producit, a Cn. Dolabella denique praetore postulat, ut sibi Quinctius iudicatum solvi satis det ex formula: QUOD AB EO PETAT, QUOIUS EX EDICTO PRAETORIS BONA DIES XXX POSSESSA SINT. Non recusabat Quinctius, quin ita satis dare iuberet, si bona possessa essent ex edicto. Decernit (quam aequum, nihil dico, unum hoc dico: novum; et hoc ipsum tacuisse mallem, quoniam utrumque quivis intellegere potuit), sed iubet P. Quinctium sponsionem cum Sex. Naevio facere: SI BONA SUA EX EDICTO P. BURRIENI PRAETORIS DIES XXX POSSESSA NON ESSENT. Recusabant, qui aderant tum Quinctio, demonstrabant de re iudicium fieri oportere, ut aut uterque inter se aut neuter satis daret; non necesse
31 esse famam alterius in iudicium venire. Clamabat

[a] Praetor 81. In the following year he had Cilicia as his province, which he and his *legatus* Verres plundered. Accused of extortion and betrayed by Verres, he was condemned and went into exile. Not to be confused with the consul in the same year, when Cicero delivered this speech.

[b] *Sponsio.* A legal wager, both parties to which agreed that the one who lost the cause should pay a certain nominal sum to the winner. The form of words was as follows: "Si bona mea ex edicto P. Burrieni praetoris dies xxx possessa non sunt, HS. . . . dare spondes?" the answer given (by Naevius) being "Spondeo."

[c] Quinctius denied that the goods had been possessed according to the edict, whereupon the praetor ordered him to prove his denial by becoming plaintiff in a fictitious action involving a *sponsio.* Dolabella evidently considered that the order of Burrienus, even though it might appear harsh, was *prima facie* valid, and he did not like to put it aside, unless it were proved to have been wrong or not duly carried out.

VIII. Quinctius returns to Rome, and appears to 30
his bail. This Naevius, a most violent fellow, who had taken possession of the property, had driven Quinctius out and robbed him of it, for eighteen months made no claim, kept quiet, amused Quinctius as long as he could with proposals for coming to terms, and finally applied to the praetor Gnaeus Dolabella[a] that Quinctius should give him security for payment of the judgement according to the formula: IN THAT HE IS CLAIMING FROM ONE WHOSE GOODS HAVE BEEN POSSESSED FOR THIRTY DAYS ACCORDING TO THE PRAETOR'S EDICT. Quinctius did not object to an order being made that he should give security, if his goods had really been "possessed" in accordance with the edict. The praetor gave a decision—how far equitable, I say nothing about that; I only say this, that it was an innovation, and I should have preferred to remain silent upon this point, since anyone could understand it, regarded from either point of view—and ordered Quinctius to enter into an engagement[b] with Naevius on the question: WHETHER HIS GOODS HAD NOT BEEN POSSESSED FOR THIRTY DAYS according to the edict of Publius Burrienus the praetor.[c] Quinctius's supporters demurred; they pointed out that the trial ought to deal with the real question,[d] so that either both parties or neither of them should give security; that there was no need for the reputation of either being put on trial.[e]

[d] The partnership dispute.

[e] If the result went against him, he would be ruined and disgraced. Dolabella considered it would be easier for him to prove a negative and speak first as a plaintiff; if the result was favourable, it would show that Quinctius's goods had not been possessed for thirty days, and the partnership dispute could be taken up; if unfavourable, he would be obliged to take the consequences of not having met Naevius's claim by appearing in court.

porro ipse Quinctius sese idcirco nolle satis dare, ne videretur iudicasse bona sua ex edicto possessa esse; sponsionem porro si istius modi faceret, se, id quod nunc evenit, de capite suo priore loco causam esse dicturum. Dolabella (quem ad modum solent homines nobiles; seu recte seu perperam facere coeperunt, ita in utroque excellunt, ut nemo nostro loco natus assequi possit) iniuriam facere fortissime perseverat; aut satis dare aut sponsionem iubet facere, et interea recusantes nostros advocatos acerrime submoveri.

32 IX. Conturbatus sane discedit Quinctius; neque mirum, cui haec optio tam misera tamque iniqua daretur, ut aut ipse se capitis damnaret, si satis dedisset, aut causam capitis, si sponsionem fecisset, priore loco diceret. Cum in altera re causae nihil esset, quin secus iudicaret ipse de se, quod iudicium gravissimum est, in altera spes esset ad talem tamen virum iudicem veniendi, unde eo plus opis auferret, quo minus attulisset gratiae, sponsionem facere maluit; fecit; te iudicem, C. Aquili, sumpsit, ex sponso egit. In hoc summa iudicii causaque tota consistit.

33 Iudicium esse, C. Aquili, non de re pecuniaria, sed

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[a] The plaintiff proposed the name of someone as *iudex*, who would be nominated if accepted by defendant, and the plaintiff then *sumpsit iudicem*.

Further, Quinctius himself emphatically declared that 31 his reason for being unwilling to give security was to avoid the appearance of himself thereby giving a verdict that his goods had been possessed in accordance with the edict; moreover, if he made an "engagement" of the kind asked for, he would be obliged to plead first in a matter affecting his civil rights, as has happened to-day. Following the practice of members of the nobility, who, when once they have begun to carry out some plan, whether right or wrong, show such superiority in its execution that is beyond the reach of one in our humble position, Dolabella most manfully persevered in acting wrongfully; he ordered that either security must be given or an engagement entered into, and in the meantime caused our advocates who protested to be forcibly removed from court.

IX. Quinctius withdrew quite distracted; and no 32 wonder, since a wretched and unfair alternative was offered him—either to condemn himself to lose his civil rights if he gave security, or to plead first in an action in which they were at stake, if he entered into an "engagement." Since in the one case there was nothing to prevent his being obliged to pass sentence on himself, which is the severest form of judgement, while in the other he had the hope after all of coming before a judge of such a character that the less influence he brought to bear, the greater the assistance he might obtain from him, Quinctius preferred to enter into the "engagement." He did so; he proposed[a] you as judge, Aquilius; and then sued Naevius on the "engagement." This is the essential point of the trial, this is the gist of the whole cause.

You see, Aquilius, that the trial is not concerned 33

de fama fortunisque P. Quincti vides. Cum maiores ita constituerint, ut, qui pro capite diceret, is posteriore loco diceret, nos inaudita criminatione accusatorum priore loco causam dicere intellegis. Eos porro, qui defendere consuerunt, vides accusare, et ea ingenia converti ad perniciem, quae antea versabantur in salute atque auxilio ferendo. Illud etiam restiterat, quod hesterno die fecerunt, ut te in ius educerent, ut nobis tempus, quam diu diceremus, praestitueres; quam rem facile a praetore impetrassent, nisi tu, quod esset tuum ius et officium potestasque, docuisses.
34 Neque nobis adhuc praeter te quisquam fuit, ubi nostrum ius contra illos obtineremus, neque illis umquam satis fuit illud obtinere, quod probari omnibus posset; ita sine iniuria potentiam levem atque inopem esse arbitrantur.

X. Verum quoniam tibi instat Hortensius, ut eas in consilium, a me postulat, ne dicendo tempus absumam, queritur priore patrono causam defendente numquam perorari potuisse, non patiar istam manere suspicionem, nos rem iudicari nolle; nec illud mihi arrogabo, me posse causam commodius demonstrare, quam antea demonstrata sit, neque tamen tam multa verba faciam, propterea quod et ab illo, qui tum dixit, informata iam causa est et a me, qui neque

[a] Cicero says Dolabella forced Quinctius not only to speak first as accuser, but he also had to defend himself, not about a mere money matter, but one which endangered his civil rights as having forfeited his recognizances.

[b] To instruct you (Aquilius) how to conduct the proceedings.

[c] *In ius*, to be carefully distinguished from *in iudicium*, proceedings before a *iudex*—*ius* being the preliminary proceedings before the praetor.

with a pecuniary matter, but with the fame and fortunes of Quinctius. Although our ancestors established the rule that a man pleading on a matter affecting his civil rights should speak after the accuser, you see that we have to plead our cause first, without having heard the charge.[a] And moreover, you see those who have been in the habit of speaking for the defence[b] playing the part of accusers to-day, and directing those abilities, which were formerly employed in saving and assisting, towards the work of destruction. The only thing that remained for them to do—and that they accomplished yesterday—was to summon you before the praetor,[c] so that you might fix in advance the time allowed for us to speak; this they would without difficulty have obtained from the praetor, had you not taught him your rights, your duties, and your functions. Neither, up to the present, 34
have we found anyone except yourself, from whom we could maintain our rights against our opponents, nor have they ever been content to maintain what anyone would consider right: so unimportant, so weak do they consider power of any kind unless it is backed up by injustice.

X. But since Hortensius presses you to consult your assessors; since he calls upon me not to waste time in talking, and complains that, when my predecessor was defending Quinctius, his speech could never have been finished, I will not allow the suspicion to continue, that we do not want the matter to be decided. I shall not be so conceited as to claim that I can set forth the cause more adequately than has already been done by others before me; yet I shall be briefer, because it has already been described and put into shape by the advocate who spoke on that occasion,

excogitare neque pronuntiare multa possum, brevitas
35 postulatur, quae mihimet ipsi amicissima est; faciam, quod te saepe animadverti facere, Hortensi; totam causae meae dictionem certas in partes dividam. Tu id semper facis, quia semper potes, ego in hac causa faciam, propterea quod in hac videor posse facere; quod tibi natura dat ut semper possis, id mihi causa concedit ut hodie possim. Certos mihi fines terminosque constituam, extra quos egredi non possim, si maxime velim, ut et mihi sit propositum, de quo dicam, et Hortensius habeat exposita, ad quae respondeat, et tu, C. Aquili, iam ante animo prospicere possis, quibus de rebus auditurus sis.

36 Negamus te bona P. Quincti, Sex. Naevi, possedisse ex edicto praetoris. In eo sponsio facta est. Ostendam primum causam non fuisse, cur a praetore postulares, ut bona P. Quincti possideres, deinde ex edicto te possidere non potuisse, postremo non possedisse. Quaeso, C. Aquili vosque, qui estis in consilio, ut, quid pollicitus sim, diligenter memoriae mandetis; etenim rem facilius totam accipietis, si haec memineritis, et me facile vestra existimatione revocabitis, si extra hos cancellos egredi conabor, quos mihi ipse circumdedi. Nego fuisse causam, cur

and also because brevity, which is most agreeable to myself, is required of me, who am incapable of thinking out or of delivering a long speech. I will do what 35
I have often observed you doing, Hortensius; I will divide my entire pleading under three distinct heads. You always do this, because you always can; I will do it in this case, because I think that in it I can; what your natural talent gives you the power of always doing, the nature of the cause permits me to do to-day. I will lay down for myself well-defined boundaries and limits which I must not overstep, however much I may desire to do so. Thus I shall have before me the subject of which I have to treat, and Hortensius will have a statement to which he has to reply, and you, Aquilius, will be able to understand in advance what are the matters which you are to hear discussed.

We deny, Sextus Naevius, that you have taken 36
possession of the goods of Publius Quinctius in accordance with the praetor's edict. That is the question in regard to which the "engagement" was made. I will first prove that you had no grounds for applying to the praetor to authorize you to take possession of the goods; next, that you could not have taken possession of them in accordance with the edict; lastly, that you did not possess them at all. I beg you, Aquilius, and you his assessors, carefully to commit to memory the promise I have made; for, if you bear these points in mind, you will find it easier to understand the whole matter, and, as to myself, you will, by your influence, easily call me back, if I endeavour to pass beyond these barriers by which I have voluntarily confined myself. I deny that Naevius had any grounds for his application; I deny that he could have taken possession of the goods

postularet, nego ex edicto possidere potuisse, nego possedisse. Haec tria cum docuero, peroraro.

37 XI. Non fuit causa, cur postulares. Qui hoc intellegi potest? Quia Sex. Naevio neque ex societatis ratione neque privatim quicquam debuit Quinctius. Quis huic rei testis est? Idem, qui acerrimus adversarius; in hanc rem te, te, inquam, testem, Naevi, citabo. Annum et eo diutius post mortem C. Quincti fuit in Gallia tecum simul Quinctius. Doce te petisse ab eo istam nescio quam innumerabilem pecuniam, doce aliquando mentionem fecisse,
38 dixisse deberi; debuisse concedam. Moritur C. Quinctius, qui tibi, ut ais, certis nominibus grandem pecuniam debuit. Heres eius P. Quinctius in Galliam ad te ipsum venit in agrum communem, eo denique, ubi non modo res erat, sed ratio quoque omnis et omnes litterae. Quis tam dissolutus in re familiari fuisset, quis tam neglegens, quis tam tui, Sexte, dissimilis, qui, cum res ab eo, quicum contraxisset, recessisset et ad heredem pervenisset, non heredem, cum primum vidisset, certiorem faceret, appellaret, rationem afferret, si quid in controversiam veniret, aut intra parietes aut summo iure experiretur? Itane est? quod viri optimi faciunt, si qui suos propinquos ac necessarios caros et honestos esse atque haberi volunt, id Sex. Naevius non faceret, qui usque eo fervet ferturque avaritia, ut de suis commodis aliquam partem nolit[1] committere, ne quam

[1] *MSS. vary between* velit *and* nolit.

[a] This rendering seems better than "on good security."

[b] Or, reading *velit*, "Naevius was so avaricious that he was ready to sacrifice something so as not to leave Quinctius anything," but it is difficult to see the sense of this.

in accordance with the edict; I deny that he did take possession of them at all. When I have proved these three assertions, I will conclude.

XI. There were no grounds for your application. 37
How can this be proved? Because Quinctius never owed anything to Naevius, neither on account of the partnership nor as a private debt. Who is a witness to this? The very man who is our bitterest opponent. On this point I will call you, you, I say, Naevius, as a witness. Quinctius lived with you in Gaul for a year and more after the death of his brother. Prove that you ever asked him to pay that enormous sum, prove that you ever mentioned or said that it was owing, and I will admit that he owed it. My client's brother 38
dies, and, according to your statement, owed you a large sum of money on certain specific heads.[a] My client, his heir, comes to you in Gaul, to your joint estate—in fact, to the very place where not only the property was, but where all the accounts and letters were kept. Who would have been so careless in his private affairs, so heedless, so unlike you, Sextus, after the property had passed out of the hands of the man with whom he had made the contract into those of his heir, as not to notify this heir as soon as he saw him, claim the money, present the account, and if any dispute arose, settle the matter privately or by the rigour of the law? Is it really so? What every good man does, every man who wishes his kinsfolk and friends to be and to be accounted worthy of affection and of honour, was this not what Sextus Naevius would do—this man who is so inflamed and carried away by greed that he would be unwilling[b] to give up any of his advantages for fear of leaving his relative, my client, a share of anything

partem huic propinquo suo ullius ornamenti relinquat?
39 et is pecuniam, si qua deberetur, non peteret, qui, quia, quod debitum numquam est, id datum non est, non pecuniam modo, verum etiam hominis propinqui sanguinem vitamque eripere conatur? Huic tum molestus esse videlicet noluisti, quem nunc respirare libere non sinis; quem nunc interficere nefarie cupis, eum tum pudenter appellare nolebas. Ita credo; hominem propinquum, tui observantem, virum bonum, pudentem, maiorem natu nolebas aut non audebas appellare; saepe, ut fit, cum ipse te confirmasses, cum statuisses mentionem de pecunia facere, cum paratus meditatusque venisses, homo timidus virginali verecundia subito ipse te retinebas; excidebat repente oratio; cum cuperes appellare, non audebas, ne invitus audiret. Id erat profecto.

40 XII. Credamus hoc, Sex. Naevium, cuius caput oppugnet, eius auribus pepercisse. Si debuisset, Sexte, petisses, et petisses statim; si non statim, paulo quidem post; si non paulo, at aliquando; sex quidem illis mensibus profecto; anno vertente sine controversia. Anno et sex mensibus vero, cum tibi cotidie potestas hominis fuisset admonendi, verbum nullum facis; biennio iam confecto fere appellas. Quis tam perditus ac profusus nepos non adesa iam,

[a] Rhetorical exaggeration (*cf.* the use of *caput* in this speech and note on § 8).

that makes life honourable? Would he not ask for 39
the money, if any were owing, he who, because that was not paid which was never owed, is endeavouring to deprive his kinsman, not only of his money, but even of his life-blood?[a] At that time I suppose you did not want to be troublesome to the man whom to-day you do not allow to breathe freely; at that time you were too modest to call upon the man to pay whom to-day you criminally desire to murder. I suppose so: you were unwilling or afraid to call upon one who was your relative, who had a great respect for you, a man of worth, modest, and older than yourself. More than once (as is often the case) after you had plucked up courage and determined to mention the money, when you approached him, having carefully prepared and considered what you intended to say, on a sudden you, the nervous man of virgin modesty, drew back; at once words failed you; when you wanted to call upon him for the money, you did not dare to do so, for fear he might feel hurt to hear you. No doubt that was the explanation.

XII. Let us believe then that Sextus Naevius 40
spared the ears of the man at whose head his attacks are now aimed. If he had owed you anything, Sextus, you would have demanded it, and at once; if not at once, a little later; if not a little later, some time or other; certainly within six months; without doubt before the end of the year. But no! for eighteen months, during which you daily had an opportunity of reminding him of the debt, you never said a word; now, when nearly two years have passed, you call upon him for the money. Is there any dissipated and extravagant spendthrift—not one

sed abundanti etiam pecunia sic dissolutus fuisset, ut fuit Sex. Naevius? Cum hominem nomino, satis
41 mihi videor dicere. Debuit tibi C. Quinctius, numquam petisti; mortuus est ille, res ad heredem venit; cum eum cotidie videres, post biennium denique appellas. Dubitabitur, utrum sit probabilius, Sex. Naevium statim, si quid deberetur, petiturum fuisse an ne appellaturum quidem biennio? Appellandi tempus non erat? At tecum plus annum vixit. In Gallia agi non potuit? At et in provincia ius dicebatur, et Romae iudicia fiebant. Restat, ut aut summa neglegentia tibi obstiterit aut unica liberalitas. Si neglegentiam dices, mirabimur, si bonitatem, ridebimus; neque praeterea quid possis dicere, invenio. Satis est argumenti nihil esse debitum Naevio, quod tam diu nihil petivit.

42 XIII. Quid, si hoc ipsum, quod nunc facit, ostendo testimonio esse nihil deberi? Quid enim nunc agit Sex. Naevius? qua de re controversia est? quod est hoc iudicium, in quo iam biennium versamur? quid negotii geritur, in quo ille tot et tales viros defatigat? Pecuniam petit. Nunc denique? verum tamen
43 petat; audiamus. De rationibus et controversiis societatis vult diiudicari. Sero, verum aliquando

whose entire fortune has been squandered but who still has plenty of money—who would have been so careless as Naevius? The mere mention of the man's name seems enough. My client's brother owed you 41
money, you never asked for it; on his death, the estate passed to his heir; although you saw him every day, you waited two years before you finally asked him to pay. Can there be any doubt which is the more probable: that Sextus Naevius would have asked for anything that was owing to him at once, or that he would not even have claimed it for two years? You had no opportunity of claiming it? But he lived with you more than a year. Proceedings could not have been taken in Gaul? But justice was administered in the province and the courts were held in Rome. The only alternative is that extreme negligence or unparalleled generosity prevented you from demanding the money. If you plead negligence, we shall be astonished, if you plead generosity, we shall laugh; and I do not know what other excuse you can find. The fact that Naevius claimed nothing for so long a time is sufficient proof that nothing was owing to him.

XIII. But what if I show that the very thing which 42
Naevius is now doing proves that nothing is owing to him? For what is he doing now? What is the matter in dispute? What is this trial on which we have already been engaged two years? What is this affair that is going on now, with which he is utterly wearing out so many eminent men? He demands his money. What! not till now? However, let him demand it; let us hear what he has to say. He 43
wants the accounts and disputed points concerning the partnership to be settled. It is rather late, but

tamen; concedamus. "Non," inquit, "id ago, C. Aquili, neque in eo nunc laboro. Pecunia mea tot annos utitur P. Quinctius. Utatur sane; non peto." Quid igitur pugnas? an, quod saepe multis in locis dixisti, ne in civitate sit, ne locum suum, quem adhuc honestissime defendit, obtineat, ne numeretur inter vivos, decernat de vita et ornamentis suis omnibus, apud iudicem causam priore loco dicat et, eam cum orarit, tum denique vocem accusatoris audiat? Quid? hoc quo pertinet? ut ocius ad tuum pervenias? At
44 si id velles, iam pridem actum esse poterat. Ut honestiore iudicio conflictere? At sine summo scelere P. Quinctium, propinquum tuum, iugulare non potes. Ut facilius iudicium sit? At neque C. Aquilius de capite alterius libenter iudicat, et Q. Hortensius contra caput non didicit dicere. Quid a nobis autem, C. Aquili, refertur? Pecuniam petit; negamus deberi. Iudicium fiat statim; non recusamus. Num[1] quid praeterea? Si veretur, ut res iudicio facto parata sit, iudicatum solvi satis accipiat; quibus a me verbis satis acceperit, isdem ipse, quod peto, satis det. Actum iam potest esse, C. Aquili;

[1] ut *nearly all* MSS.

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[a] That is, a trial involving more important issues than a mere money matter.

[b] *Ut quid* (the reading of nearly all the MSS.) must be rendered: "in order that what may happen besides?"

[c] It would appear that Naevius owed Quinctius something in connexion with the partnership.

better late than never; let us grant this. "This is not the object of the present action, Gaius Aquilius," says he; "this is not what troubles me now. Quinctius has had the use of my money for so many years. Let him have it for all I care; I do not ask for it." What then are you contending for? Is it, as you have said on so many occasions, that my client may lose his rights as a citizen, that he may not be able to keep his position which up till now he has so honourably maintained, that he may no longer be reckoned among the living, that he may have to fight for his life and all that makes it honourable, to plead his cause first before the judge, without hearing the voice of the accuser until he himself has finished his speech? What then? What purpose does this serve? That you may come into your own more speedily? But if this was what you wanted, that could have
been done long ago. That you may contest the 44
matter by a more honourable form of procedure?[a] But you cannot, without committing an abominable crime, murder your kinsman Quinctius. That the trial may be facilitated? But neither does Aquilius take pleasure in pronouncing sentence when a man's civil rights are at stake, nor has Hortensius learned the art of demanding a man's head. But what is our answer, Aquilius? Naevius demands his money; we deny that any is owing to him. Let a trial take place at once; we make no objection. Is there anything else he wants?[b] If he is afraid that, after the decision has been given in his favour, the money will not be forthcoming, let him accept security for the payment and give security for what I claim in the same form as that in which he accepts security from me.[c] This can be settled now, Aquilius; you can

iam tu potes liberatus discedere molestia, prope dicam, non minore quam Quinctius.

45 Quid agimus, Hortensi? quid de hac condicione dicimus? Possumus aliquando depositis armis sine periculo fortunarum de re pecuniaria disceptare? possumus ita rem nostram persequi, ut hominis propinqui caput incolume esse patiamur? possumus petitoris personam capere, accusatoris deponere? "Immo," inquit, "abs te satis accipiam; ego autem tibi satis non dabo." XIV. Quis tandem nobis ista iura tam aequa discribit? quis hoc statuit, quod aequum sit in Quinctium, id iniquum esse in Naevium? "Quincti bona," inquit, "ex edicto praetoris possessa sunt." Ergo, id ut confitear, postulas, ut, quod numquam factum esse iudicio defendimus, id, proinde quasi factum sit, nostro iudicio confirmemus?

46 Inveniri ratio, C. Aquili, non potest, ut ad suum quisque quam primum sine cuiusquam dedecore, infamia pernicieque perveniat? Profecto, si quid deberetur, peteret; non omnia iudicia fieri mallet quam unum illud, unde haec omnia nascuntur. Qui inter tot annos ne appellarit quidem Quinctium, cum potestas esset agendi cotidie, qui, quo tempore primum male agere coepit, in vadimoniis differendis tempus omne consumpserit, qui postea vadimonium quoque missum fecerit, hunc per insidias vi de agro communi deiecerit, qui, cum de re agendi nullo

[a] The money question in the partnership.

[b] Madvig omits *male*; if so, the meaning is simply "to take legal proceedings."

leave the tribunal at once, relieved of a matter which I was on the point of saying has been as troublesome to you as to Quinctius.

What are we to do, Hortensius? What are we to 45 say of our offer? Can we not for once lay aside our arms and discuss a question of money without imperilling anyone's fortunes? Can we not assert our claim in such a way as to leave the civil rights of a kinsman unimpaired? Can we not assume the rôle of plaintiff and abandon that of accuser? "No," says Naevius, "I will accept security from you, but I will not give you security." XIV. Who is it, I ask, who imposes upon us such equitable terms? Who has decided that what is fair for Quinctius is unfair for Naevius? "The estate of Quinctius," says he, "has been taken possession of in accordance with the praetor's edict." So then you demand that I should admit this, so that we may by our own verdict confirm the existence of this possession which we maintain in our judgement does not exist? Cannot 46 some way be found, Aquilius, whereby each of the parties may come into his own without bringing disgrace, infamy, and ruin upon the other? Undoubtedly, if anything were owing to Naevius he would claim it; he would not prefer that all kinds of trial should take place rather than that single one,[a] which is the origin of all the rest. The man who for so many years never even applied to Quinctius for payment when he could have brought an action any day he chose; who, from the moment he began to act fraudulently,[b] wasted all the time in a number of adjournments, who afterwards released his recognizances, and treacherously drove my client by force from their common lands; who, when he had the

recusante potestas fuisset, sponsionem de probro facere maluerit, qui, cum revocetur ad id iudicium, unde haec nata sunt omnia, condicionem aequissimam repudiet, fateatur se non pecuniam, sed vitam et sanguinem petere, is non hoc palam dicit: "Mihi si quid deberetur, peterem atque adeo iam pridem
47 abstulissem; nihil hoc tanto negotio, nihil tam invidioso iudicio, nihil tam copiosa advocatione uterer, si petendum esset; extorquendum est invito atque ingratiis; quod non debet, eripiendum atque exprimendum est; de fortunis omnibus P. Quinctius deturbandus est; potentes, diserti, nobiles omnes advocandi sunt; adhibenda vis est veritati, minae iactentur, pericula intendantur, formidines opponantur, ut his rebus aliquando victus et perterritus ipse se dedat"? Quae mehercule omnia, cum, qui contra pugnent, video, et cum illum consessum considero, adesse atque impendere videntur neque vitari ullo modo posse; cum autem ad te, C. Aquili, oculos animumque rettuli, quo maiore conatu studioque aguntur, eo leviora infirmioraque existimo.

48 Nihil igitur debuit, ut tu ipse praedicas. Quid, si debuisset? continuone causa fuisset cur a prae-

[a] In reality, the *sponsio* was about the fact of possession.
[b] The *advocati* of Naevius, sitting together on the benches.

opportunity of bringing an action on the main point without anyone objecting, preferred to enter into an "engagement" which might ruin his opponent's reputation [a]; who, when he is brought back to trying the question which is the origin of all the rest, rejects the most equitable terms, thereby virtually admitting that it is not my client's money but his life-blood that he is seeking—does not this man openly declare: "If anything had been owing to me, I should have claimed it and, more than that, I should have recovered it long ago; I should have had no need to 47
enter upon so troublesome a business nor to engage in such odious legal proceedings, nor to employ so many friends to assist me, if it had been merely a question about making a claim. But I have to screw money out of a man against his will and under compulsion; I have to wrest and squeeze out of him what he does not owe; he must be driven from all his possessions; I must summon to my aid all men of influence, eloquence, and rank; violence must be employed against truth, threats flung about, perils thrown in his way, terrors brought before him, so that at last, overcome and thoroughly alarmed by these methods of attack, he may surrender of his own accord"? And in fact, by Hercules! when I see those who are fighting against us, when I think of that company of their friends,[b] all these perils seem to me to be at hand, impending and inevitable; but when I carry back my eyes and thoughts to you, Aquilius, I believe that, the greater their efforts and zeal, the more trifling and feeble will the results appear.

Well then, Quinctius owed you nothing, as you 48
yourself declare. But what if he had owed you anything? Would that have been at once a reason for

tore postulares, ut bona possideres? Non opinor id quidem neque ius esse neque cuiquam expedire. Quid igitur demonstrat? Vadimonium sibi ait esse desertum. XV. Antequam doceo id factum non esse, libet mihi, C. Aquili, ex officii ratione atque ex omnium consuetudine rem ipsam et factum simul Sex. Naevi considerare. Ad vadimonium non venerat, ut ais, is, quicum tibi affinitas, societas, omnes denique causae et necessitudines veteres intercedebant. Ilicone ad praetorem ire convenit? continuone verum fuit postulare, ut ex edicto bona possidere liceret? ad haec extrema et inimicissima iura tam cupide decurrebas, ut tibi nihil in posterum, quod gravius atque crudelius facere posses, reservares?
49 Nam quid homini potest turpius, quid viro miserius aut acerbius usu venire? quod tantum evenire dedecus, quae tanta calamitas inveniri potest? Pecuniam si cuipiam fortuna ademit aut si alicuius eripuit iniuria, tamen, dum existimatio est integra, facile consolatur honestas egestatem. At non nemo aut ignominia affectus aut iudicio turpi convictus bonis quidem suis utitur, alterius opes, id quod miserrimum est, non exspectat, hoc tamen in miseriis

[a] *Iudicium turpe* is a trial in which the penalty for the unsuccessful litigant was *infamia*, the loss of certain political rights. Such were actions relating to breach of trust, guardianship, partnership. One whose property was possessed and sold became *infamis* (*Pro Roscio Comoedo*, vi. 16). He lost his vote, could not fill public offices or appear in a court of law, and was expelled from his tribe.

making an application to the praetor to attach Quinctius's goods? I think that such a proceeding is neither in accordance with the law nor to anyone's interest. What excuse, then, does Naevius give? He says that Quinctius had not kept his appointment to appear.

XV. Before proving that this is not the case, I should like, Aquilius, to examine both the fact itself and the behaviour of Sextus Naevius in the light of the principles of duty and the custom of all men. According to your assertion, he had not kept his appointment—this man between whom and yourself there existed ties of kinship, partnership, in short, all friendly relations and long-standing intimacy. Was it seemly that you should go straight to the praetor? Was it fair that you should immediately make application to be allowed to enter into possession of Quinctius's property by virtue of his edict? Did you resort with such eager haste to these extreme and most unfriendly legal measures, in order that there might be nothing more grievous or more cruel which you kept back for future employment? For what greater dis- 49
grace can happen to a human being, what greater or more bitter misfortune can befall a man? Can such dishonour fall to one's lot, can such disaster be met with? If a man has been deprived of his money by ill-luck or forcibly deprived of it by another's injustice, as long as his reputation is unsullied, his upright character proves a ready consolation for his poverty. On the other hand, there are cases where men, either tainted with ignominy or convicted of an offence that involves disgrace,[a] do remain in possession of their own property, and are not obliged to wait for help from others, which is the worst of miseries, and so find what

adiumento et solacio sublevatur. Cuius vero bona venierunt, cuius non modo illae amplissimae fortunae, sed etiam victus vestitusque necessarius sub praeconem cum dedecore subiectus est, is non modo ex numero vivorum exturbatur, sed, si fieri potest, infra etiam mortuos amandatur. Etenim mors honesta saepe vitam quoque turpem exornat, vita tam turpis
50 ne morti quidem honestae locum relinquit. Ergo hercule, cuius bona ex edicto possidentur, huius omnis fama et existimatio cum bonis simul possidetur; de quo libelli in celeberrimis locis proponuntur, huic ne perire quidem tacite obscureque conceditur; cui magistri fiunt et domini constituuntur, qui, qua lege et qua condicione pereat, pronuntient, de quo homine praeconis vox praedicat et pretium conficit, huic acerbissimum vivo videntique funus ducitur, si funus id habendum est, quo non amici conveniunt ad exsequias cohonestandas, sed bonorum emptores ut carnifices ad reliquias vitae lacerandas et distrahendas.

51 XVI. Itaque maiores nostri raro id accidere voluerunt, praetores, ut considerate fieret, comparaverunt. Viri boni cum palam fraudantur, cum experiundi potestas non est, timide tamen et pedetemptim istuc descendunt vi ac necessitate coacti, inviti,

[a] The life of an *infamis*.

[b] *Magister* was one of the creditors appointed to superintend the sale of the property; *domini* were the creditors who sold the property as if they were the owners of it.

[c] There is special force in *acerbum funus*, *acerbus* being used of a premature death, before one is ripe for it, "dying cruelly before his time."

is after all a help and comfort that alleviates their sufferings. But the man whose property has been sold, who has seen not only his rich possessions but even the necessaries of food and clothing ignominiously put up for sale under the hand of an auctioneer—that man is not only banished from the company of the living, but is relegated to a position lower than the dead, if that be possible. In fact, an honourable death often confers lustre even upon a disgraceful life, but a life so disgraceful as this[a] leaves no room even for an honourable death. Therefore, by 50
Hercules! if a man's goods are possessed by virtue of an edict, his character and reputation are taken possession of together with the goods; if a man's name is posted up on placards in the most frequented places, he is not even allowed the privilege of perishing in silence and obscurity; if a man has trustees appointed and put in as owners of his property,[b] to fix the rules and conditions of his ruin; if a man hears the voice of an auctioneer crying out his name and putting a price on the goods, then, in bitterest[c] pain, alive and with his own eyes, he sees the final act of his own funeral, if that can be called a funeral, which is attended not by friends met together to do honour to his obsequies, but by brokers, like executioners, ready to tear and mangle the remnants of his life.

XVI. Accordingly our ancestors willed that such a 51
sentence should be a rare occurrence, and the praetors have ordained that it should only be pronounced after mature consideration. Worthy men, even when they are openly defrauded, and when there is no opportunity of trying the case in the usual manner, only lower themselves to extreme measures with timidity and caution, driven by the force of

multis vadimoniis desertis, saepe illusi ac destituti; considerant enim, quid et quantum sit alterius bona proscribere. Iugulare civem ne iure quidem quisquam bonus vult, mavult commemorari se, cum posset perdere, pepercisse quam, cum parcere potuerit, perdidisse. Haec in homines alienissimos, denique inimicissimos viri boni faciunt et hominum existimationis et communis humanitatis causa, ut, cum ipsi nihil alteri scientes incommodarint, nihil ipsis iure incommodi cadere possit.

52 Ad vadimonium non venit. Quis? Propinquus. Si res ista gravissima sua sponte videretur, tamen eius atrocitas necessitudinis nomine levaretur. Ad vadimonium non venit. Quis? Socius. Etiam gravius aliquid ei deberes concedere, quicum te aut voluntas congregasset aut fortuna coniunxisset. Ad vadimonium non venit. Quis? Is, qui tibi praesto semper fuit. Ergo in eum, qui semel hoc commisit, ut tibi praesto non esset, omnia tela coniecisti, quae parata sunt in eos, qui permulta male agendi causa
53 fraudandique fecerunt? Si dupondius tuus ageretur, Sex. Naevi, si in parvula re captionis aliquid vererere, non statim ad C. Aquilium aut ad eorum aliquem, qui consuluntur, concurrisses? cum ius amicitiae,

necessity and with great reluctance, after the defendant has several times failed to appear, and after they have often been flouted and disappointed. For they carefully consider the nature and gravity of confiscating a man's possessions. No honourable man, even if he is within his rights, wants to put a citizen to death; he would prefer that it should be remembered that he spared when he could have destroyed than that he destroyed when he could have spared. Honourable men treat the greatest strangers, indeed, even their greatest enemies in this manner, for the sake of public opinion and the common feelings of humanity; so that, having never themselves done anything unpleasant to others knowingly, nothing disagreeable can justly befall them by way of reprisals.

He did not appear to his recognizances. Who? 52
Your kinsman. However blamable the matter may have appeared in itself, its heinousness should have been thought less of in consideration of your close relationship. He did not appear to his recognizances. Who? Your partner. You ought to have pardoned even a graver fault in a man with whom either your own wish had associated you or chance had united you. He did not appear to his recognizances. Who? The man who was always in your company. So then, because he has once been guilty of not being in your company, you have hurled against him all the weapons which are reserved for use against those who have committed many guilty and fraudulent acts.
If it were a question of some twopenny bit of your own, 53
Naevius, if you were afraid of being taken in in some trifling matter, would you not have hurried to consult Gaius Aquilius or some other adviser? But when the rights of friendship, partnership, and kinship were in

societatis, affinitatis ageretur, cum officii rationem atque existimationis duci conveniret, eo tempore tu non modo non ad C. Aquilium aut L. Lucilium rettulisti, sed ne ipse quidem te consuluisti, ne hoc quidem tecum locutus es: "Horae duae fuerunt; Quinctius ad vadimonium non venit. Quid ago?" Si mehercule haec tecum duo verba fecisses: "Quid ago?" respirasset cupiditas atque avaritia, paulum aliquid loci rationi et consilio dedisses, tu te collegisses, non in eam turpitudinem venisses, ut hoc tibi esset apud tales viros confitendum, qua tibi vadimonium non sit obitum, eadem te hora consilium cepisse hominis propinqui fortunas funditus evertere.

54 XVII. Ego pro te nunc hos consulo post tempus et in aliena re, quoniam tu in tua re, cum tempus erat, consulere oblitus es; quaero abs te, C. Aquili, L. Lucili, P. Quinctili, M. Marcelle: Vadimonium mihi non obiit quidam socius et affinis meus, quicum mihi necessitudo vetus, controversia de re pecuniaria recens intercedit; postulone a praetore, ut eius bona mihi possidere liceat, an, cum Romae domus eius, uxor, liberi sint, domum potius denuntiem? Quid est, quod hac tandem de re vobis possit videri? Profecto, si recte vestram bonitatem atque prudentiam cognovi, non multum me fallit, si consulamini, quid sitis responsuri: primum exspectare, deinde, si lati-

[a] The three last-named are Aquilius's assessors.

question; when it was fitting that your obligations and character should be considered, at such a time you not only abstained from consulting Gaius Aquilius or Lucius Lucilius, but you did not even consult yourself; you did not even say to yourself: "Two hours have passed; Quinctius has not appeared to his bail; what am I to do?" If, by Hercules! you had only said these five words to yourself, your cupidity and avarice would have abated; you would have left room for reason and prudence; you would have composed yourself; you would not have sunk to the disgrace of having to confess before men of such eminence as these that, at the very same hour at which he did not appear to his recognizances, you formed the design of utterly ruining the fortunes of one who was your kinsman.

XVII. I will now consult these gentlemen on your behalf, in regard to a matter that is now past and with which I am not concerned, since you forgot to consult them at the proper time on what was your personal affair. I ask you the following questions, Gaius Aquilius, Lucius Lucilius Balbus, Publius Quinctilius, and Marcus Claudius Marcellus.[a] A partner and relative of mine has not answered to his recognizances; I have long been intimate with him, but have recently been engaged in a dispute with him about money matters. Am I to make application to the praetor to authorize me to take possession of his goods? or, since he has a house, a wife, and children at Rome, should I rather leave a notice at his house? I should like to know your opinion on this matter. If I have rightly gauged your kindly feelings and good sense, I have certainly little doubt of the answer you would make if you were consulted: in the first place 54

tare ac diutius ludificare videatur, amicos convenire, quaerere, quis procurator sit, domum denuntiare. Dici vix potest, quam multa sint, quae respondeatis ante fieri oportere, quam ad hanc rationem extremam
55 necessario devenire. Quid ad haec Naevius? Ridet scilicet nostram amentiam, qui in vita sua rationem summi officii desideremus et instituta virorum bonorum requiramus. "Quid mihi," inquit, "cum ista summa sanctimonia ac diligentia? viderint," inquit, "ista officia viri boni, de me autem ita considerent: non quid habeam, sed quibus rebus invenerim, quaerant, et quem ad modum natus et quo pacto educatus sim. Memini; vetus est, 'de scurra multo facilius divitem quam patrem familias fieri posse.'"
56 Haec ille, si verbis non audet, re quidem vera palam loquitur. Etenim si vult virorum bonorum instituto vivere, multa oportet discat atque dediscat, quorum illi aetati utrumque difficile est.

XVIII. "Non dubitavi," inquit, "cum vadimonium desertum esset, bona proscribere." Improbe; verum, quoniam tu id tibi arrogas et concedi postulas, concedamus. Quid, si numquam deseruit, si ista causa abs te tota per summam fraudem et malitiam ficta est, si vadimonium omnino tibi cum P. Quinctio nullum fuit? quo te nomine appellemus? Improbum? At etiamsi desertum vadimonium esset,

wait; then, if the man seems to be keeping out of the way and making a fool of you for any length of time, have an interview with your friends, ask who his agent is, and give notice at his house. It is difficult to say how many things there are which you would advise should be done before being compelled to resort to this extreme measure. What says Naevius to this?
No doubt he laughs at our folly in desiring to find in 55
his life any regard for duty or looking for the principles of men of honour. "What have I to do with such severe morality and caution?" says he; "let men of honour attend to the fulfilment of such obligations; but, as for me, let them ask, not what I possess, but how I have acquired it, the circumstances of my birth, and the manner in which I was brought up. I remember that there is an old saying: it is much easier for a buffoon to become rich than a good head
of a household." This is what in reality he openly 56
declares by his deeds, though he does not venture to say it in so many words. For if indeed he desires to live according to the principles of honourable men, he must learn and unlearn much—two things equally difficult for him at his time of life.

XVIII. "I did not hesitate," says he, "to put up his goods for sale, since he had forfeited his recognizances." Shameless rascal! since, however, that is what you claim as your right, and demand that it should be allowed, let us allow it. But what if he never forfeited his recognizances at all, if your plea is entirely a tissue of lies, invented by you with the greatest roguery and malice; what if no engagement for his appearing was ever made between you and Quinctius? by what name ought we to call you then? A rascal? But even if he had forfeited his

tamen in ista postulatione et proscriptione bonorum improbissimus reperiebare. Malitiosum? Non negas. Fraudulentum? Iam id quidem arrogas tibi et praeclarum putas. Audacem, cupidum, perfidiosum? Vulgaria et obsoleta sunt; res autem nova atque
57 inaudita. Quid ergo est? Vereor mehercule, ne aut gravioribus utar verbis, quam natura fert, aut levioribus, quam causa postulat. Ais esse vadimonium desertum. Quaesivit a te, statim ut Romam rediit, Quinctius, quo die vadimonium istuc factum esse diceres. Respondisti statim: Nonis Febr. Discedens in memoriam redit Quinctius, quo die Roma in Galliam profectus sit; ad ephemeridem revertitur; invenitur dies profectionis pridie Kal. Febr. Nonis Febr. si Romae fuit, causae nihil dici-
58 mus, quin tibi vadimonium promiserit. Quid? hoc inveniri qui potest? Profectus est una L. Albius, homo cum primis honestus; dicet testimonium. Prosecuti sunt familiares et Albium et Quinctium; dicent hi quoque testimonium. Litterae P. Quincti, testes tot, quibus omnibus causa iustissima est, cur scire potuerint, nulla, cur mentiantur, cum adstipulatore tuo comparabuntur.

59 Et in hac eius modi causa P. Quinctius laborabit et diutius in tanto metu miser periculoque versabitur? et vehementius eum gratia adversarii perterrebit,

[a] *Cf.* § 24.

[b] *Stipulator* is one who demands a formal promise, opposed to *promissor*, one who gives the promise. Sometimes one *stipulator* employed another (*adstipulator*) as accessory or assistant, who said to the promiser "idem spondes?" corresponding to the stipulator's "dari spondes?" The *adstipulator* in the present instance was probably a witness to the *vadimonium*.

recognizances, in making your application to the praetor and in advertising his goods for sale you still showed yourself to be an utter rascal. Full of malice? You do not deny it. Fraudulent? That is a name which you have already claimed for yourself and glory in it. Audacious, avaricious, perfidious? These terms are commonplace and out-of-date; but the act is unprecedented and unheard of. What
term then am I to use? By Hercules! I am afraid 57
of using expressions so harsh that they would outrage nature, or not so strong as the cause demands. You assert that Quinctius forfeited his recognizances. As soon as he returned to Rome, he asked you to tell him on what day he had given bail to appear. You immediately answered: on the 5th of February. On leaving you, Quinctius tried to remember the day on which he set out from Rome for Gaul. On consulting his diary, he found that the day on which he set out was the 29th of January.[a] If he was at Rome on the 5th of February, we admit there is no reason why he should not have entered into an en-
gagement with you to appear. But how can this be 58
verified? Lucius Albius, an extremely honourable man, set out with him; he will give evidence. Some friends accompanied both Albius and Quinctius; they also will give evidence. The letters of Quinctius, those numerous witnesses, all of whom had the strongest reasons for being able to know the truth and none for lying, shall be confronted with your assistant stipulator.[b]

And is it in a cause of this nature that Quinctius 59
shall be in difficulty? Shall he any longer live miserably in the midst of such fear and peril? Shall he be more terrified by the influence of his opponent than

quam fides iudicis consolabitur? Vixit enim semper inculte atque horride; natura tristi ac recondita fuit; non ad solarium, non in campo, non in conviviis versatus est; id egit, ut amicos observantia, rem parsimonia retineret; antiquam officii rationem dilexit, cuius splendor omnis his moribus obsolevit. At si in causa pari discedere inferior videretur, tamen esset non mediocriter conquerendum; nunc in causa superiore ne ut par quidem sit postulat, inferiorem esse se patitur dumtaxat usque eo, ne cum bonis, fama fortunisque omnibus Sex. Naevi cupiditati crudelitatique dedatur.

60 XIX. Docui, quod primum pollicitus sum, C. Aquili, causam omnino, cur postularet, non fuisse, quod neque pecunia debebatur et, si maxime deberetur, commissum nihil esset, quare ad istam rationem perveniretur. Attende nunc ex edicto praetoris bona P. Quincti possideri nullo modo potuisse. Tracta[1] edictum. QUI FRAUDATIONIS CAUSA LATITARIT. Non est is Quinctius; nisi si latitant, qui ad negotium suum relicto procuratore proficiscuntur. CUI HERES NON EXSTABIT. Ne is quidem. QUI EXSILII CAUSA SOLUM VERTERIT. Dici id non potest. *QUI ABSENS*

[1] tractat *MSS.*, *old edd.* tracta: recita *Manutius.*

[a] In the Forum, a favourite resort and meeting-place for gossip. Bitterly ironical. What can a man expect who is out-of-date in his rude, honest ways?

[b] If no one appeared, or was likely to appear as heir to represent his father, the goods could be seized as a precautionary measure in the interest of the heir himself and the creditors.

reassured by the integrity of the judge? O yes, for he has always led a rude and boorish life; he has always been naturally melancholy and reserved; he never frequented the sundial,[a] nor the Campus Martius, nor banquets; he has always made it his aim to keep his friends by treating them with respect, and his property by economy; he loved the old-fashioned principle of duty, all the brightness of which amid our modern manners has become dim and antiquated. Yet, if, in a cause in which the rights on both sides were equal, he were to be seen coming off defeated, even then there would be cause for complaint; but now, in a cause in which his rights are superior, he does not even demand to be considered on an equality; he is willing that he come off defeated, but only so far as not to be handed over with all his goods, fame, and fortunes to the greed and cruelty of Sextus Naevius.

XIX. I have fulfilled my first promise, Aquilius; 60
I have proved that there was no reason at all why Naevius should apply to the praetor, since no money was owing to him and, even if there had been, nothing had been done to justify a resort to such an extreme method of procedure.

Now let me call your attention to the fact that the goods of Quinctius could not possibly have been possessed in accordance with the praetor's edict. Examine the edict. ONE WHO HAS KEPT OUT OF THE WAY WITH FRAUDULENT INTENT. This does not apply to Quinctius, unless those are keeping out of the way, who went away on business leaving an agent behind. HE WHO HAS NO HEIR.[b] This does not apply to Quinctius either. HE WHO HAS LEFT HIS COUNTRY TO GO INTO EXILE. This cannot be said of Quinctius.

IUDICIO DEFENSUS NON FUERIT. Ne id quidem. Quo tempore existimas oportuisse, Naevi, absentem Quinctium defendi aut quo modo? tum, cum postulabas, ut bona possideres? Nemo adfuit; neque enim quisquam divinare poterat te postulaturum, neque quemquam attinebat id recusare, quod praetor
61 non fieri, sed ex edicto suo fieri iubebat. Qui locus igitur absentis defendendi procuratori primus datus est? Cum proscribebas. Ergo adfuit, non passus est, libellos deiecit Sex. Alfenus; qui primus erat officii gradus, servatus est a procuratore summa cum diligentia.

Videamus, quae deinde sint consecuta. Hominem P. Quincti deprehendis in publico, conaris abducere; non patitur Alfenus, vi tibi adimit, curat, ut domum reducatur ad Quinctium. Hic quoque summe constat procuratoris diligentis officium. Debere tibi dicis Quinctium, procurator negat; vadari vis, promittit; in ius vocas, sequitur; iudicium postulas, non recusat. Quid aliud sit absentem defendi, ego non
62 intellego. At quis erat procurator? Credo aliquem electum[1] hominem egentem, litigiosum, improbum,

[1] *The reading of two MSS.: the rest have* eiectum.

[a] The words in the text, from *Dici id non potest* to *quidem*, are inserted by Hotman, who professed to have found them in a very old MS. Roby thinks that the inserted clause could not have justified a writ of possession which led to sale, and holds that mere undefended absence could only have led to *possessio* in the sense of "custody" or "safe-keeping." Hence possibly the non-concurrence of the other creditors, a point raised by Cicero to make the case for the *missio* seem weaker.

[b] His order was not definite or absolute, but only referred to something that would have to be done *in accordance with his edict.* If there were any dispute, the matter would be

HE WHO HAS NOT BEEN LEGALLY DEFENDED IN HIS ABSENCE. Nor even that.[a] When or how, Naevius, do you think that Quinctius ought to have been defended in his absence? At the time when you made application to the praetor to take possession of the property? There was certainly no one there then, for no one could foresee that you would make such a request, nor was it anyone's business to object to what the praetor ordered, not to be done, but to be done in accordance with his edict.[b] What 61
then was the first opportunity the agent had of defending the absent man? When you advertised the sale of the property. Then Sextus Alfenus came forward; he did not allow this; he tore down the placards. His first duty as an agent was most carefully discharged by him.

Let us see what followed next. You seized a slave belonging to Quinctius in the street and attempted to carry him off. Alfenus refused to allow it, he took him away from you by force and had him taken back to Quinctius's house. In this also the duty of a zealous agent is shown to have been admirably performed. You assert that Quinctius is in your debt, his agent denies it; you wish to bind him over to appear in court, he promises to appear; you summon him before the magistrate,[c] he follows you; you demand a trial, he does not refuse it. If this is not defending an absent man, I do not know what is. But who was the agent? I suppose some beggar 62
had been chosen, a litigious rascal, capable of putting

investigated and compensation made if the order was unjustifiable and had damaged the person on whom it had been executed.

[c] See note on § 33.

qui posset scurrae divitis cotidianum convicium sustinere. Nihil minus; eques Romanus locuples, sui negotii bene gerens, denique is, quem, quotiens Naevius in Galliam profectus est, procuratorem Romae reliquit. XX. Et audes, Sex. Naevi, negare absentem defensum esse Quinctium, cum eum defenderit idem, qui te solebat? et, cum is iudicium acceperit pro Quinctio, cui tu et rem et famam tuam commendare proficiscens et concredere solebas, conaris hoc dicere, neminem exstitisse, qui Quinctium iudicio defenderet?

63 "Postulabam," inquit, "ut satis daret." Iniuria postulabas; ita videbare[1]; recusabat Alfenus.—"Ita, verum praetor decernebat."—Tribuni igitur appellabantur.—"Hic te," inquit, "teneo; non est istud pati neque iudicio defendere, cum auxilium a tribunis petas." Hoc ego, cum attendo, qua prudentia sit Hortensius, dicturum esse eum non arbitror. Cum autem antea dixisse audio et causam ipsam considero, quid aliud dicere possit, non reperio. Fatetur enim libellos Alfenum deiecisse, vadimonium promisisse, iudicium quin acciperet in ea ipsa verba, quae Naevius edebat, non recusasse, ita tamen: more et instituto, per eum magistratum, qui auxilii causa
64 constitutus est. Aut haec facta non sint necesse est

[1] iubebare *Hotman.*

[a] Reading *ita iubebare*, the words are Naevius's: "you were ordered to do so."

[b] Alfenus expressed his willingness to give security in accordance with the law, if required to do so by the tribunes.

up with the daily insults of a wealthy buffoon. Anything but that; he was a wealthy Roman knight, one who managed his own affairs well, and lastly, he was the man whom Naevius left as his agent in Rome, whenever he went into Gaul. XX. And do you dare, Sextus Naevius, to deny that Quinctius was defended during his absence, seeing that he was defended by the same man who used to defend you? seeing that he who offered to stand trial on behalf of Quinctius was the man to whom, when going on a journey, you were in the habit of entrusting and committing the care of your fortune and reputation, do you attempt to say that there was no one to defend Quinctius in court? "I demanded," says Naevius, 63
"that he should give security for payment of the judgement." You were wrong in your demand; so at least you appeared to be[a]; Alfenus refused. "Yes, but the praetor was going to order that he must give it." That is why an appeal was made to the tribunes. "Here," says Naevius, "I have got you; to appeal to the tribunes is neither submitting to a trial nor defending in court." When I consider how clever Hortensius is, I do not think that he will make this objection; but when I hear that he has already done so and consider the cause in itself, I do not see what else he can say. For he admits that Alfenus tore down the placards; that he promised to appear in court; that he did not refuse to stand trial in identically the same terms as those proposed by Naevius, with the reservation, however, that in accordance with custom and the established law, the order should be made by the magistrate appointed for the purpose of assisting the citizens.[b] It is 64
necessary, then, either that these things have not

aut C. Aquilius, talis vir, iuratus hoc ius in civitate constituat: cuius procurator non omnia iudicia acceperit,[1] quae quisque in verba postularit, cuius procurator a praetore tribunos appellare ausus sit, eum non defendi, eius bona recte possideri posse, ei misero, absenti, ignaro fortunarum suarum omnia vitae ornamenta per summum dedecus et ignominiam deripi
65 convenire. Quod si probari nemini potest, illud certe probari omnibus necesse est, defensum esse iudicio absentem Quinctium. Quod cum ita sit, ex edicto bona possessa non sunt. At enim tribuni plebis ne audierunt quidem. Fateor, si ita est, procuratorem decreto praetoris oportuisse parere. Quid? si M. Brutus intercessurum se dixit palam, nisi quid inter ipsum Alfenum et Naevium conveniret, videturne intercessisse appellatio tribunorum non morae, sed auxilii causa?

66 XXI. Quid deinde fit? Alfenus, ut omnes intellegere possent iudicio defendi Quinctium, ne qua subesse posset aliena aut ipsius officio aut huius existimatione suspicio, viros bonos complures advocat, testatur isto audiente se pro communi necessitudine

[1] acceperit *is inserted in the Aldine ed.* (1519).

[a] Probably the father of the Brutus who was one of Caesar's murderers. In the Civil War he supported Marius and was put to death by order of Pompeius when in command of the forces in Cisalpine Gaul. The appeal to the tribunes appears to have been against the writ of possession or the giving of security by Alfenus.

taken place or that such a man as Gaius Aquilius should on his oath lay down as law in this state: that one whose agent has not consented to stand trial on any issue, whatever the terms in which the claim may have been drawn up, one whose agent has ventured to appeal from the praetor to the tribunes, is not defended; that his goods may be legally possessed; that it may be thought fit that the unhappy man, during his absence, ignorant of what is happening to him, may be stripped with the greatest disgrace and ignominy of all that makes life honourable. But if such an interpretation of the law cannot 65
be admitted by anyone, certainly everyone must admit that Quinctius during his absence was legally defended. This being so, his goods were not possessed in accordance with the edict. But you say the tribunes did not even listen to the appeal. If this is the case, I grant that the agent ought to have obeyed the decree of the praetor. What? if Marcus Brutus[a] openly declared that he would intervene unless Alfenus himself and Naevius came to some agreement, does it not appear that the appeal to the tribunes and their intervention was intended, not for the purpose of causing delay, but of affording protection?

XXI. What happened next? In order that 66
everyone might be able to understand that Quinctius was legally defended and to prevent the slightest suspicion arising, unfavourable either to the way in which he had discharged his duty as agent or to Quinctius's reputation, Alfenus summoned several honourable citizens; he called them to witness, in the hearing of Naevius, that, considering the friendship which united him to both parties, he first appeals

id primum petere, ne quid atrocius in P. Quinctium absentem sine causa facere conetur; sin autem inimicissime atque infestissime contendere perseveret, se paratum esse omni recta atque honesta ratione defendere, quod petat, non deberi; se
67 iudicium id, quod edat, accipere. Eius rei condicionisque tabellas obsignaverunt viri boni complures. Res in dubium venire non potest. Fit rebus omnibus integris neque proscriptis neque possessis bonis, ut Alfenus promittat Naevio sisti Quinctium. Venit ad vadimonium Quinctius. Iacet res in controversiis isto calumniante biennium, usque dum inveniretur, qua ratione res ab usitata consuetudine recederet et in hoc singulare iudicium causa omnis concluderetur.

68 Quod officium, C. Aquili, commemorari procuratoris potest, quod ab Alfeno praeteritum esse videatur? quid affertur, quare P. Quinctius negetur absens esse defensus? An vero id, quod Hortensium, quia nuper iniecit, et quia Naevius semper id clamitat, dicturum arbitror, non fuisse Naevio parem certationem cum Alfeno illo tempore, illis dominantibus? Quod si velim confiteri, illud, opinor, concedent, non procuratorem P. Quincti neminem fuisse, sed gratiosum fuisse. Mihi autem ad vincendum satis est fuisse procuratorem, quicum experiretur; qualis is fuerit,

[a] That is, Naevius.

[b] That is, that of Marius.

to him not to attempt to take severe measures against Quinctius in his absence; but if, on the other hand, he persists in carrying on his prosecution in a most unfriendly and hostile manner, that he is ready to maintain, by all honourable and legal means, that the money he demands is not owing, and to stand trial in any form of action given notice of by the plaintiff. Several honourable gentlemen signed 67
the minutes of the facts and conditions. There cannot be any doubt about their genuineness. Affairs being thus in their original position, Quinctius's goods being neither proscribed nor possessed, the result was that Alfenus promised Naevius that Quinctius should appear in court. He appears to his recognizances. The affair remains in dispute for two years, owing to the slanders spread abroad by that fellow[a] until a method could be found whereby it could be diverted from the ordinary course of procedure and the whole cause could be included within the limits of this remarkable form of trial.

What part of an agent's duty can be mentioned, 68
Gaius Aquilius, which appears to have been neglected by Alfenus? What reason is there for denying that Quinctius was defended in his absence? Or am I to suppose what Hortensius will put forward, because he has recently thrown out a hint of it and Naevius is always loudly proclaiming it, is that Naevius was not contending on equal terms with Alfenus at that particular time, when that particular party[b] was in power? If I am willing to admit this, I think they will concede to me that, far from not having any agent, Quinctius had one who was very popular. But for gaining my cause, it is sufficient that there was an agent, against whom Naevius could have brought an

si modo absentem defendebat per ius et per magistratum, nihil ad rem arbitror pertinere.

69 "Erat enim," inquit, "illarum partium." Quidni? qui apud te esset eductus; quem tu a puero sic instituisses, ut nobili ne gladiatori quidem faveret. Si, quod tu semper summe cupisti, idem volebat Alfenus, ea re tibi cum eo par contentio non erat? "Bruti," inquit, "erat familiaris; itaque is intercedebat." Tu contra Burrieni, qui iniuriam decernebat, omnium denique illorum, qui tum et poterant per vim et scelus plurimum et, quod poterant, id audebant. An omnes tu istos vincere volebas, qui nunc, tu ut vincas, tanto opere laborant? Aude id dicere non palam, sed
70 ipsis, quos advocasti. Tametsi nolo eam rem commemorando renovare, cuius omnino rei memoriam omnem tolli funditus ac deleri arbitror oportere; XXII. unum illud dico: Si propter partium studium potens erat Alfenus, potentissimus Naevius; si fretus gratia postulabat aliquid iniquius Alfenus, multo iniquiora Naevius impetrabat. Neque enim inter studium vestrum quicquam, ut opinor, interfuit; ingenio, vetustate,[1] artificio tu facile vicisti. Ut alia omittam, hoc satis est: Alfenus cum iis et propter

[1] venustate *Turnebus*.

[a] *Nobilis* is used in the double sense of belonging to the nobility, and well-known, distinguished. Cicero makes out both Alfenus and Naevius to be opposed to the nobility, Sulla's party. In § 73 the affair between them is called a mere skirmish, at the time when the Marian party was in power, whereas now Naevius has the support of so many influential men.

action; what kind of a man he was, provided he defended his absent client by legal means and through a lawful magistrate, I do not think has anything to do with the question.

"Yes, but," says he, "Alfenus belonged to the 69
dominant party." Why not? a man who had been brought up in your house, whom you had taught from his boyhood not to have respect for any kind of nobility, not even for a noble[a] gladiator. If Alfenus wished the same thing as you earnestly desired, in what respect was the struggle between you unequal? "He was an intimate friend of Brutus," says he, "and therefore Brutus intervened." On the other hand, you were an intimate friend of Burrienus, who gave an unfair decision, in short, of all those to whom at that time violence and crime gave the greatest power, and who dared to do all that they had the power to do. Or did you wish all those to be victorious who are now working so hard that you may obtain the victory? Dare to say so: not openly, but merely to those whom you have summoned to your assistance.
However, I do not wish to recall the memory of an 70
event, which in my opinion ought to be entirely forgotten and blotted out. XXII. I have only one remark to make: if his zeal for a political party made Alfenus powerful, then Naevius was most powerful; if Alfenus, on the strength of his personal influence, demanded anything that was somewhat unfair, Naevius obtained privileges that were far more unfair. For, in my opinion, there was no difference between you in party zeal, but in natural ability, cunning, and trickery, you were easily first. Leaving other things out of the question, it is enough to say that Alfenus perished with those and for the

eos periit, quos diligebat, tu, postquam, qui tibi erant amici, non poterant vincere, ut amici tibi essent, qui vincebant, effecisti.

71 Quodsi tum par tibi ius cum Alfeno fuisse non putas, quia tamen aliquem contra te advocare poterat, quia magistratus aliqui reperiebatur, apud quem Alfeni causa consisteret, quid hoc tempore Quinctio statuendum est? cui neque magistratus adhuc aequus inventus est neque iudicium redditum est usitatum, non condicio, non sponsio, non denique ulla umquam intercessit postulatio, mitto aequa, verum ante hoc tempus ne fando quidem audita. De re pecuniaria cupio contendere.—"Non licet."—At ea controversia est. —"Nihil ad me attinet; causam capitis dicas oportet."—Accusa, ubi ita necesse est.—"Non," inquit, "nisi tu ante novo modo priore loco dixeris." —Dicendum necessario est.—"Praestituentur horae ad arbitrium nostrum, iudex ipse coercebitur."—
72 Quid tum?—"Tu aliquem patronum invenies, hominem antiqui officii, qui splendorem nostrum et gratiam neglegat; pro me pugnabit L. Philippus, eloquentia, gravitate. honore florentissimus civitatis, dicet Hortensius, excellens ingenio, nobilitate, existi-

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[a] Naevius once supported Marius, but now changed over to Sulla, when he saw that he would gain the victory.

[b] This is ironical, the idea being that no advocate on behalf of Quinctius will be able successfully to oppose the brilliant advocates and supporters upon whom Naevius can count.

[c] L. Marcius Philippus, tribune 104 B.C., consul 91. In the Civil Wars he took the side of Sulla. He was a distinguished orator, considered inferior only to Crassus and Antonius. In Horace, *Ep.* i. 7. 46 he is spoken of as "Strenuus et fortis causisque Philippus agendis Clarus." Cicero else-

sake of those whom he loved, whereas you, after those who were your friends were unable to obtain the victory, managed to make friends of those who were victorious.[a]

But if you think that at that time you had not the same legal rights as Alfenus, because in spite of all he was able to call in someone as his legal adviser against you, because a magistrate was found before whom his cause could be maintained, what course of action should Quinctius decide upon in his present circumstances? He has not yet found an impartial magistrate; the usual form of action has not been granted him; no condition, no engagement, in short, no demand has ever been made—I say nothing of a fair demand, but one that up to the present has never been heard or spoken of. I wish to plead on a question of money. "That is not permitted." But that is the point at issue. "That has nothing to do with me; you must plead on a charge involving your political rights." Make the charge then, since this course is necessary. "No, not unless you speak first, according to the new rule." If I must, I must. "The number of hours allowed for your pleading will be fixed in advance as we think fit; the judge himself will be kept within limits." What then? 72
"You will find some advocate, a man with the old-fashioned sense of duty, a man to treat our brilliant counsel and influence with indifference[b]; Lucius Philippus[c] will fight for me, a man of the greatest eminence in the state for his eloquence, dignity, and position; Hortensius will speak for me, a man distinguished for his ability, nobility, and reputation;

where (*De orat.* iii. 1. 4) describes him as "vehemens et disertus et imprimis fortis ad resistendum."

matione, aderunt autem homines nobilissimi ac potentissimi, ut eorum frequentiam et consessum non modo P. Quinctius, qui de capite decernit, sed quivis,
73 qui extra periculum sit, perhorrescat." Haec est iniqua certatio, non illa, qua tu contra Alfenum equitabas[1]; huic ne ubi consisteret quidem contra te locum reliquisti.

Quare aut doceas oportet Alfenum negasse se procuratorem esse, non deiecisse libellos, iudicium accipere noluisse, aut, cum haec ita facta sint, ex edicto te bona P. Quincti non possedisse concedas. XXIII. Etenim si ex edicto possedisti, quaero, cur bona non venierint, cur ceteri sponsores et creditores non convenerint; nemone fuit, cui deberet Quinctius? Fuerunt, et complures fuerunt, propterea quod C. frater aliquantum aeris alieni reliquerat. Quid ergo est? Homines erant ab hoc omnes alienissimi, et iis debebatur, neque tamen quisquam inventus est tam insignite improbus, qui violare
74 P. Quincti existimationem absentis auderet; unus fuit, affinis, socius, necessarius, Sex. Naevius, qui, cum ipse ultro deberet, quasi eximio praemio sceleris exposito cupidissime contenderet, ut per se afflictum atque eversum propinquum suum non modo honeste partis bonis, verum etiam communi luce privaret. Ubi erant ceteri creditores? denique hoc tempore

[1] velitabaris *Junta edition and MSS.*

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[a] Apparently the sureties for Quinctius's late brother Gaius.

[b] See § 44.

further, I shall have the support of men of the highest birth and the greatest power, men whose numbers and presence would make not only Quinctius tremble, who is fighting for his political rights, but even anyone who is beyond the risk of any such danger." *This* 73
is an unequal contest, not that in which you skirmished against Alfenus; you have not even left Quinctius a place where he could make a stand against you.

Wherefore you must either prove that Alfenus denied that he was my client's agent, that he did not tear down the placards, that he refused to stand trial; or, since these facts are established, you must admit that you did not take possession of Quinctius's goods in accordance with the edict.

XXIII. For if you did take possession in accordance with the edict, I ask why the goods were not sold, why the rest of the sureties[a] and creditors did not meet. Was there no one to whom Quinctius owed money? Yes, there were several creditors, because his brother Gaius had left a considerable amount of debts. What, then, was the reason of this? They were all total strangers to him, and money was owing to them; yet not one among them was found capable of such remarkable scoundrelism as to venture to attack the reputation of Quinctius in his absence.
There was only one, his kinsman, his partner, his 74
intimate friend, Sextus Naevius, who, although he was even himself in debt to Quinctius,[b] as if some extraordinary reward had been offered for his crime, made the most passionate efforts to deprive his kinsman, crushed and overthrown by him, not only of property honestly acquired, but even of the light of day that is common to all. Where were the rest of the creditors? Indeed, where are they now? Who

ubi sunt? Quis est, qui fraudationis causa latuisse
dicat, quis, qui absentem defensum neget esse Quinc-
75 tium? Nemo invenitur. At contra omnes, quibus-
cum ratio huic aut est aut fuit, adsunt, defendunt,
fides huius multis locis cognita ne perfidia Sex. Naevi
derogetur, laborant. In huius modi sponsionem
testes dare oportebat ex eo numero, qui haec dicerent:
Vadimonium mihi deseruit, me fraudavit, a me nominis
eius, quod infitiatus esset, diem petivit; ego experiri
non potui, latitavit, procuratorem nullum reliquit.
Horum nihil dicitur. Parantur testes, qui haec
dicant. Verum, opinor, viderimus, cum dixerint.
Unum tamen hoc cogitent, ita se graves esse, ut, si
veritatem volent retinere, gravitatem possint ob-
tinere; si eam neglexerint,[1] ita leves esse,[2] ut omnes
intellegant non ad obtinendum mendacium, sed ad
verum probandum auctoritatem adiuvare.

76 XXIV. Ego haec duo quaero, primum qua ratione
Naevius susceptum negotium non transegerit, hoc
est cur bona, quae ex edicto possidebat, non ven-
diderit, deinde cur ex tot creditoribus alius ad istam ra-
tionem nemo accesserit, ut necessario confiteare neque
tam temerarium quemquam fuisse, neque te ipsum
id, quod turpissime suscepisses, perseverare et trans-
igere potuisse. Quid, si tu ipse, Sex. Naevi, statuisti

[1] negligere *ed. Ven.*
[2] sint *MSS.*: esse *Clark.*

[a] Naevius makes the claim that he will be able to bring forward *graves homines* as witnesses, to which Cicero replies that their *auctoritas* will depend on the manner in which they give their evidence, obviously suggesting that they will probably give false evidence.

is there who can say that Quinctius kept out of the
way with fraudulent intent, or can deny that he was
defended during his absence? No one can be found
to make such statements. On the contrary, all those 75
who have or have had dealings with him are here to
support and defend him, and are doing their utmost
to prevent my client's good faith, well known in
many places, from being disparaged by the per-
fidious slanders of Naevius. In the case of an "en-
gagement" like this, he ought to produce witnesses
from among them to depose as follows: "He has for-
feited his recognizances with me; he has cheated
me; he asked for time to pay a debt which he had
denied; I could not get him to court; he kept out
of the way; he left no agent." Nothing of the kind
is said. Witnesses are being procured to say it.
Well, I suppose we shall look into that after they
have said it. Yet let them remember this one thing
—that claiming to be men of weight, their evidence
can only carry weight on condition that they keep
to the truth; but if they neglect it, they so lose all
weight that every one sees that authority is an aid
to proving the truth, not to backing up a lie.[a]

XXIV. I put these two questions: first, on what 76
grounds was it that Naevius did not finish the business
which he had undertaken; that is, why did he not sell
the goods of which he was in possession in accordance
with the edict; secondly, why, among so many
creditors, did no one else fall in with Naevius's plan?
I ask these questions that you may be forced to
admit that there was no one among them so rash,
and that you yourself have been unable to persist
in and complete the disgraceful business you had
undertaken. What if you yourself, Sextus Naevius,

bona P. Quincti ex edicto possessa non esse? Opinor, tuum testimonium, quod in aliena re leve esset, id in tua, quoniam contra te est, gravissimum debet esse. Emisti bona Sex. Alfeni L. Sulla dictatore vendente; socium tibi in his bonis edidisti Quinctium. Plura non dico. Cum eo tu voluntariam societatem coibas, qui te in hereditaria societate fraudarat, et eum iudicio tuo comprobabas, quem spoliatum fama fortunisque omnibus arbitrabare?

77 Diffidebam mehercule, C. Aquili, satis animo certo et confirmato me posse in hac causa consistere. Sic cogitabam, cum contra dicturus esset Hortensius, et cum me esset attente auditurus Philippus, fore uti permultis in rebus timore prolaberer. Dicebam huic Q. Roscio, cuius soror est cum P. Quinctio, cum a me peteret et summe contenderet, ut propinquum suum defenderem, mihi perdifficile esse contra tales oratores non modo tantam causam perorare, sed omnino verbum facere conari. Cum cupidius instaret, homini pro amicitia familiarius dixi mihi videri ore durissimo esse, qui praesente eo gestum agere conaretur; qui vero cum ipso contenderent, eos, etiamsi quid antea recti aut venusti habere visi essent, id amittere; ne

[a] How could Quinctius have been in a position to become a purchaser in partnership with a creditor by whom his goods had been seized? *Societatem coire* is the regular phrase for forming a partnership.

[b] Quintus Roscius, the famous comedian, defended by Cicero in a speech included in this volume.

have proved that the goods of Publius Quinctius were not taken possession of according to the edict? I think that your evidence, which would have little weight in a matter which had nothing to do with you, ought to have the greatest weight in a matter which concerns you personally, because it goes against you. You bought the goods of Sextus Alfenus, which the dictator Lucius Sulla caused to be put up for sale; you gave out that Quinctius was your partner in their purchase.[a] I say no more. Did you form a voluntary partnership with the man who had cheated you in an hereditary partnership? Did you by your own judgement show your esteem for a man who, in your opinion, had been deprived of his reputation and his fortunes?

By heavens! Aquilius, I was feeling distrustful 77
of my ability to stand my ground with sufficient courage and resolution in a cause like this. I was reflecting that, since Hortensius was to plead against me and Philippus was to listen with the greatest attention, I should be nervous and make frequent mistakes. I kept saying to Quintus Roscius,[b] here present, whose sister is my client's wife, when he most earnestly begged me to undertake the defence of his kinsman, that it was very difficult for me, not only to plead so important a cause to the end, but even to attempt to utter a single word. When he pressed me still more urgently, I said to him, with the familiarity of a friend, that anyone who even attempted a stage gesture in his presence must be most brazen-faced, but that those who presumed to pit themselves against him, even if they already enjoyed a certain reputation for grace and correctness, would lose it at once, and that I was afraid that

quid mihi eius modi accideret, cum contra talem artificem dicturus essem, me vereri.

78 XXV. Tum mihi Roscius et alia multa confirmandi mei causa dixit, ut mehercule, si nihil diceret, tacito ipso officio et studio, quod habebat erga propinquum suum, quemvis commoveret (etenim cum artifex eius modi sit, ut solus dignus videatur esse, qui in scaena spectetur, tum vir eius modi est, ut solus dignus videatur, qui eo non accedat) — verum tamen: "Quid? si," inquit, "habes eius modi causam, ut hoc tibi planum sit faciendum, neminem esse, qui possit biduo aut summum triduo septingenta milia passuum ambulare, tamenne vereris, ut possis hoc contra Hortensium contendere?" "Minime," in-
79 quam. "Sed quid id ad rem?" "Nimirum," inquit, "in eo causa consistit." "Quo modo?" Docet me eius modi rem et factum simul Sex. Naevi, quod si solum proferretur, satis esse deberet. Quod abs te, C. Aquili, et a vobis, qui estis in consilio, quaeso ut diligenter attendatis; profecto intellegetis illim ab initio cupiditatem pugnasse et audaciam, hinc veritatem et pudorem, quoad potuerit, restitisse. Bona postulas ut ex edicto possidere liceat. Quo die? Te ipsum, Naevi, volo audire; volo inauditum facinus ipsius, qui id commisit, voce convinci. Dic, Naevi, diem. "Ante diem V Kalend. intercalares." Bene ais. Quam longe est hinc in saltum vestrum Gallicanum? Naevi, te rogo. "DCC milia passuum."

[a] That is, as Hortensius is.

something of the kind might happen to me, when I had to speak against such an artist.[a]

XXV. Then Roscius said much to encourage me; 78
and by Hercules! even if he had not said a word, anyone would have been greatly moved merely by the silent expression of his interest and zeal for his kinsman. For as he is such an *artist* that he alone seems worthy to be seen on the stage, so is he such a *man* that he alone seems worthy of never appearing upon it. "But," he added, "suppose that you have such a cause that you need only prove that there is no one who can walk seven hundred miles in two or at most three days, would you still be afraid that you could not maintain the truth of so simple a statement against Hortensius?" "Certainly not," I answered; "but what has this to do with the matter?" "The whole 79
cause undoubtedly turns upon it," he replied. "How so?" I asked. He then told me of the facts and at the same time of an action of Naevius, of such a kind that its disclosure alone ought to be enough. I beg you, Aquilius, and you his assessors, to listen carefully to what I have to say. I have no doubt you will see that, from the outset, on the one side avarice and audacity have been the attackers, while on the other, truth and modesty have resisted to the utmost of their power. You make an application that you may be allowed to take possession of Quinctius's goods according to the edict. On what day? It is yourself, Naevius, whom I want to hear; I want an unprecedented act of villainy to be proved by the words of the very man who committed it. Give the date, Naevius. "On February 20." Correct. How far is it from here to your pastures in Gaul? I ask you, Naevius. "Seven hundred miles." Quite

Optime. De saltu deicitur Quinctius—quo die? possumus hoc quoque ex te audire? Quid taces? dic, inquam, diem. Pudet dicere; intellego; verum et sero et nequiquam pudet. Deicitur de saltu, C. Aquili, pridie Kalend. intercalares; biduo post aut, ut statim de iure aliquis cucurrerit, non toto triduo
80 DCC milia passuum conficiuntur. O rem incredibilem! o cupiditatem inconsideratam! o nuntium volucrem! Administri et satellites Sex. Naevi Roma trans Alpes in Segusiavos biduo veniunt. O hominem fortunatum, qui eius modi nuntios seu potius Pegasos habeat!

XXVI. Hic ego, si Crassi omnes cum Antoniis exsistant, si tu, L. Philippe, qui inter illos florebas, hanc causam voles cum Hortensio dicere, tamen superior sim necesse est; non enim, quem ad modum putatis, omnia sunt in eloquentia; est quaedam tamen ita perspicua veritas, ut eam infirmare nulla res possit.
81 An, antequam postulasti, ut bona possideres, misisti, qui curaret, ut dominus de suo fundo a sua familia vi deiceretur? Utrumlibet elige; alterum incredibile est, alterum nefarium, et ante hoc tempus utrumque

[a] Not *Segusiani*. They were a Gallic people, who in Caesar's time settled in the angle between the Saône and the Rhone and westwards beyond the upper course of the Loire. The MSS. have *Sebaginnos*, which led to the conjecture that they were an otherwise unknown Gallic tribe in Savoy. Hirschfeld says that Cicero would not have mentioned any Gallic tribe, but only in general terms the further limits of the province of Gallia Narbonensis. He conjectures *ad Cebennas* (Cévennes), the mountain in Southern Gaul that separated the Helvii and Arverni. There are several various readings here, the commonest being *Sebusianos*: *Sebaginnos* Julian; *Sebaginos* Müller; *Segusiavos* Baiter.

[b] Licinius Crassus (140–91 B.C.), consul 95. He died a few days after he had violently attacked L. Marcius Philippus (§ 72), one of Aquilius's assessors.

right. Quinctius is turned out of his pasture: on what day? can you also tell us this? Why are you silent? Tell us the date, I say. He is ashamed to do so; I understand; but his shame is too late and useless. Quinctius was turned out of his pasture on February 23; two days later, or, if we suppose that someone started running from the court immediately, in less than three days, a journey of seven hundred miles was accomplished. Incredible! reck- 80
less covetousness! A winged messenger! The agents and hangers-on of Sextus Naevius reached the territory of the Segusiavi[a] across the Alps from Rome in two days! Lucky man to possess such messengers or rather flying horses!

XXVI. On this occasion, if all the Crassi[b] and Antonii[c] could appear in court; even if you, Lucius Philippus, who shared their eminence, desired to join Hortensius in pleading this cause, yet I must gain the day. For eloquence does not, as you imagine, decide everything; there are truths so evident that nothing can invalidate them. Now, 81
before applying for authority to take possession of the goods, did you send an agent to see that the owner was expelled from his own estate by force and by his own slaves?[d] Take your choice; the one is incredible, the other is atrocious; both are unprece-

[c] Marcus Antonius (143–87 B.C.), praetor 104, consul 99. In the Civil War he took the side of Sulla, and was put to death by Marius on entering Rome. He is one of the interlocutors in Cicero's *De oratore*. He and Crassus were the greatest orators of their time.

[d] Roby thinks that, although this was a great risk for Naevius to run, his action was legitimate in so far as he got the praetor's order before the eviction in Gaul took place.

inauditum. Septingenta milia passuum vis esse decursa biduo? dic. Negas? ante igitur misisti. Malo; si enim illud diceres, improbe mentiri viderere; cum hoc confiteris, id te admisisse concedis, quod ne mendacio quidem tegere possis. Hoc consilium Aquilio et talibus viris tam cupidum, tam audax, tam
82 temerarium probabitur? Quid haec amentia, quid haec festinatio, quid haec immaturitas tanta significat? non vim, non scelus, non latrocinium, non denique omnia potius quam ius, quam officium, quam pudorem? Mittis iniussu praetoris. Quo consilio? Iussurum sciebas. Quid? cum iussisset, tum mittere nonne poteras? Postulaturus eras. Quando? Post dies xxx. Nempe si te nihil impediret, si voluntas eadem maneret, si valeres, denique si viveres. Praetor scilicet iussisset. Opinor, si vellet, si valeret, si ius diceret, si nemo recusaret, qui ex ipsius decreto
83 et satis daret et iudicium accipere vellet. Nam, per deos immortales! si Alfenus procurator P. Quincti tibi tum satis daret et iudicium accipere vellet, denique omnia, quae postulares, facere voluisset, quid ageres? revocares eum, quem in Galliam miseras? At hic quidem iam de fundo expulsus, iam a suis dis penatibus praeceps eiectus, iam, quod indignissimum

[a] According to Mommsen, these words are a gloss. It may refer to the time between Naevius's sending a messenger and the day of his application to the praetor. Others refer *postulaturus eras* to the final application for the sale, thirty days being the time that the possession must last before this could be made.

dented. Do you maintain that seven hundred miles were covered in two days? Tell me. You answer no? Then you sent your agent beforehand. I like this better; for if you said the former, you would show yourself a bare-faced liar; in admitting the latter, you allow that you have been guilty of a crime which you cannot cover up even by a lie. Will a course of action, so covetous, so audacious, and so rash, meet with the approval of Aquilius and men such as his assessors? What is the meaning of this mad- 82
ness, this precipitate and untimely haste? Does it not indicate violence, crime, brigandage, in short, anything but justice, duty, and honour? You sent an agent without an order from the praetor. What was your intention? You knew that he would give the order. What! could you not have waited till he had given it, and then sent your agent? You were going to make your application. When? Thirty days or so after.[a] Yes, provided nothing happened to prevent you, if you did not change your mind, if you were in good health, in short, if you were alive. Of course the praetor would have given the order. I suppose so, if he had pleased, if he had been in good health, if he had been in court, if there had been no one to refuse to give security and be willing to stand trial in accordance with his decree. For, by the immortal gods! if Alfenus, my client's 83
agent, had then given you security and been willing to stand trial, in short, had been willing to do everything you demanded, what would you have done? Would you have recalled the agent whom you had sent to Gaul? But Quinctius would by then have been expelled from his estate, driven headlong out of hearth and home, and, which is the height of

est, suorum servorum manibus nuntio atque imperio tuo violatus esset. Corrigeres haec scilicet tu postea. De cuiusquam vita dicere audes, qui hoc concedas necesse est, ita te caecum cupiditate et avaritia fuisse, ut, cum, postea quid futurum esset, ignorares, accidere autem multa possent, spem maleficii praesentis in incerto reliqui temporis eventu collocares? Atque haec perinde loquor, quasi ipso illo tempore, cum te praetor iussisset ex edicto possidere, si in possessionem misisses, debueris aut potueris P. Quinctium de possessione deturbare.

84 XXVII. Omnia sunt, C. Aquili, eius modi, quivis ut perspicere possit in hac causa improbitatem et gratiam cum inopia et veritate contendere. Praetor te quem ad modum possidere iussit? Opinor, ex edicto. Sponsio quae in verba facta est? SI EX EDICTO PRAETORIS BONA P. QUINCTI POSSESSA NON SUNT. Redeamus ad edictum. Id quidem quem ad modum iubet possidere? Numquid est causae, C. Aquili, quin, si longe aliter possedit, quam praetor edixit, iste ex edicto non possederit, ego sponsione vicerim? Nihil, opinor. Cognoscamus edictum. QUI EX EDICTO MEO IN POSSESSIONEM VENERINT. De te loquitur, Naevi, quem ad modum tu putas; ais enim te ex edicto venisse; tibi, quid facias, definit, te instituit,

[a] Both of which alternatives are denied by Cicero.

indignity, outraged by the hands of his own slaves, at your bidding and according to your instructions. No doubt you would have set matters right later. And do you dare to attack any man's character, you who are forced to admit that you were so blinded by passion and avarice that, although you did not know what was going to happen afterwards—and many things might have happened—you founded your hopes of gain from a present crime on the uncertain issues of the future? And, in saying this, I am speaking just as if, at the moment when the praetor had authorized you to take possession according to his edict and supposing you had sent to take possession, you either should or could have ejected Quinctius from possession.[a]

XXVII. All these facts, Gaius Aquilius, are of such 84 a kind that anyone can clearly see that in this cause rascality and influence are contending against helplessness and integrity. How did the praetor order you to take possession? According to his edict, I suppose. In what terms was the "wager" or "engagement" drawn up? IF THE GOODS OF PUBLIUS QUINCTIUS HAVE NOT BEEN TAKEN POSSESSION OF ACCORDING TO THE PRAETOR'S EDICT. To return to the edict. In what manner does it order possession to be taken? If Naevius took possession in quite a different way from what the praetor ordered, can it be disputed that he did not take possession according to the edict, and that I have won the wager? Certainly not, I imagine. Let us examine the edict. THOSE WHO HAVE ENTERED INTO POSSESSION ACCORDING TO MY EDICT. He is speaking of you, Naevius, according to your idea, for you say that you entered into possession according to the edict, which defines what you are to do, and gives

tibi praecepta dat. EOS ITA VIDETUR IN POSSESSIONE ESSE OPORTERE. Quo modo? QUOD IBIDEM RECTE CUSTODIRE POTERUNT, ID IBIDEM CUSTODIANT; QUOD NON POTERUNT, ID AUFERRE ET ABDUCERE LICEBIT. Quid tum? DOMINUM, inquit, INVITUM DETRUDERE NON PLACET. Eum ipsum, qui fraudandi causa latitet, eum ipsum, quem iudicio nemo defenderit, eum ipsum, qui cum omnibus creditoribus suis male agat,
85 invitum de praedio detrudi vetat. Proficiscenti tibi in possessionem praetor ipse, Sex. Naevi, palam dicit: "Ita possideto, ut tecum simul possideat Quinctius, ita possideto, ut Quinctio vis ne afferatur." Quid? tu id quem ad modum observas? Mitto illud dicere, eum, qui non latitarit, cui Romae domus, uxor, liberi, procurator esset, eum, qui tibi vadimonium non deseruisset; haec omnia mitto; illud dico, dominum expulsum esse de praedio, domino a familia sua manus allatas esse ante suos Lares familiares; hoc dico . . .

* * * * * * *

XXVIII. . . . Naevium ne appellasse quidem Quinctium, cum simul esset et experiri posset cotidie; deinde quod omnia iudicia difficillima cum summa sua

[a] There is a difference between taking possession with the intention of keeping it for one's own, or as belonging to someone else. In a *missio in possessionem* the one who is *missus* has only the detention of the thing, to guard it and prevent its alienation, the original possessor not thereby losing his actual possession. Thus *possideto* appears to be used in the sense of detention, *possideat* in that of legal possession. Even if Quinctius were expelled from his land, he did not lose legal possession, since the one who expelled him did not intend to keep it as his own, and had not the *animus domini* (see Long's note).

[b] Something is missing here, where Cicero endeavours to prove, as he promised to do in §36, that Naevius had not

you instructions and directions. IT PLEASES US THAT THEY SHOULD BE IN POSSESSION IN THE MANNER FOLLOWING. In what manner? WHAT THEY CAN SAFELY GUARD UPON THE SPOT LET THEM GUARD THERE; WHAT THEY CANNOT, IT SHALL BE LAWFUL TO CARRY OFF AND DRIVE AWAY. What next? TO EJECT THE OWNER AGAINST HIS WILL DOES NOT PLEASE US. Even the man who keeps out of the way with fraudulent intent, even the man whom nobody has defended in his trial, even the man who acts with bad faith towards all his creditors, cannot be ejected from his property
against his will. When you set out to take posses- 85
sion, Sextus Naevius, the praetor himself openly told you: You may take possession in such a manner that Quinctius may have possession with you at the same time; you may take possession in such a manner that no violence be offered to Quinctius.[a] Well? how have you observed this order? I say nothing about his being a man who did not keep out of the way, who had a house, a wife, children, and an agent at Rome, who had not forfeited his recognizances—I say nothing about all this; I only say that the owner was ejected from his estate, that hands were laid on the owner by his own slaves in the presence of his household gods. I say this . . .[b]

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XXVIII. [I have shown] that Naevius did not even apply to Quinctius, although he lived with him and could have gone to law with him any day; next, that he preferred entering into all the most troublesome

taken possession of the goods of Quinctius at all. See Appendix on p. 109 where the passage from Severianus is translated.

invidia maximoque periculo P. Quincti fieri mallet quam illud pecuniarium iudicium, quod uno die transigi posset; ex quo uno haec omnia nata et profecta esse concedit. Quo in loco condicionem tuli, si vellet pecuniam petere, P. Quinctium iudicatum solvi satis daturum, dum ipse, si quid peteret, pari condicione uteretur.

86 Ostendi, quam multa ante fieri convenerit, quam hominis propinqui bona possideri postularentur, praesertim cum Romae domus eius, uxor, liberi essent et procurator aeque utriusque necessarius. Docui, cum desertum esse dicat vadimonium, omnino vadimonium nullum fuisse; quo die hunc sibi promisisse dicat, eo die ne Romae quidem eum fuisse; id testibus me pollicitus sum planum facturum, qui et scire deberent et causam, cur mentirentur, non haberent. Ex edicto autem non potuisse bona possideri demonstravi, quod neque fraudandi causa latitasset neque exsilii causa
87 solum vertisse diceretur. Reliquum est, ut eum nemo iudicio defenderit. Quod contra copiosissime defensum esse contendi non ab homine alieno neque ab aliquo calumniatore atque improbo, sed ab equite Romano, propinquo ac necessario suo, quem ipse Sex. Naevius procuratorem relinquere antea consuesset; neque eum, si tribunos appellarit, idcirco minus iudicio pati paratum fuisse, neque potentia procuratoris

legal proceedings, with great prejudice to himself and the greatest danger to Publius Quinctius, to abiding by a pecuniary action, the source and origin of all these proceedings, as he admits, which could have been finished in one day. On that occasion I proposed that, if he intended to sue for the money, Quinctius should give security for the payment of the judgement, provided that Naevius himself, in case Quinctius claimed any money, should give the same security to him.

I have shown how many steps should have been 86
taken before application was made for possession of the goods of a relative, especially as he had at Rome a house, a wife, children, and an agent, a friend of both parties. I have proved that when Naevius says the recognizances were forfeited, no recognizances had been given at all; that on the day on which he says my client had made him a promise to appear, he was not even at Rome; and I undertook to make this clear by the evidence of witnesses who were both bound to know the facts and had no reason for lying. Further, I have proved that the property could not have been possessed according to the edict, because Quinctius had neither kept out of the way with fraudulent intent nor was it asserted that he had left his country to go into exile. There remains the 87
allegation that no one defended him in court. In answer to this I maintained that he was fully defended, not by any stranger nor by any false accuser or knavish lawyer, but by a Roman knight, his friend and relative, whom Naevius himself had formerly been in the habit of leaving at Rome as his agent. Nor, even if he did appeal to the tribunes, was he on that account less ready to submit to trial, nor was

Naevio ius ereptum ; contra istum potentia sua tum tantum modo superiorem fuisse, nunc nobis vix re-
88 spirandi potestatem dare. XXIX. Quaesivi, quae causa fuisset, cur bona non venissent, cum ex edicto possiderentur. Deinde illud quoque requisivi, qua ratione ex tot creditoribus nemo neque tum idem fecerit neque nunc contra dicat, omnesque pro P. Quinctio pugnent, praesertim cum in tali iudicio testimonia creditorum existimentur ad rem maxime pertinere. Postea sum usus adversarii testimonio, qui sibi eum nuper edidit socium, quem, quo modo nunc intendit, ne in vivorum quidem numero tum demonstrat fuisse. Tum illam incredibilem celeritatem seu potius audaciam protuli ; confirmavi necesse esse aut biduo DCC milia passuum esse decursa aut Sex. Naevium diebus compluribus ante in possessionem misisse, quam postularet, uti ei liceret bona
89 possidere. Postea recitavi edictum, quod aperte dominum de praedio detrudi vetaret ; in quo constitit Naevium ex edicto non possedisse, cum confiteretur ex praedio vi detrusum esse Quinctium. Omnino autem bona possessa non esse constitui, quod bonorum possessio spectetur non in aliqua parte, sed in universis, quae teneri et possideri possint. Dixi domum Romae fuisse, quo iste ne adspirarit quidem, servos complures, ex quibus iste possederit neminem,

[a] *Teneri ac possideri*: in legal language, *possidere* is properly used of corporeal things (things that can be touched, as a slave, farm, gold), *tenere* of incorporeal (things that cannot be touched, as a right, inheritance, usufruct).

Naevius deprived of his rights by the influence of my client's agent ; on the contrary, it was Naevius who was then somewhat superior by reason of his influence, and now he scarcely allows us the chance
of breathing. XXIX. I asked what was the reason 88
why the goods had not been sold, since they had been seized according to the edict. Next, I inquired how it happened that none of my client's numerous creditors followed Naevius's course, but, instead of speaking against Quinctius to-day, are all of them doing their utmost to defend him, especially since, in an action such as this, the evidence of creditors is considered to be most material to the case. Afterwards, I used the evidence of my opponent, who just lately declared that he had taken into partnership a man who, as he maintains to-day, he then showed was not even among the number of the living. Then I brought forward that instance of incredible rapidity or rather audacity. I proved that either seven hundred miles must have been traversed in two days or that Naevius had sent an agent to take possession several days before he applied to the praetor to authorize him
to attach the goods. I afterwards read the text of the 89
edict, which clearly forbade an owner to be ejected from his estate ; this is enough to show that Naevius had not taken possession according to the edict, since he admitted that Quinctius had been forcibly ejected. On the other hand, I proved that the property had not been taken possession of at all, because goods are regarded as possessed, not when part only, but when everything that can be held and possessed [a] has been seized. I said that my client had a house in Rome, of which Naevius did not even attempt to take possession ; a number of slaves, none of whom

ne attigerit quidem; unum fuisse, quem attingere
90 conatus sit; prohibitum quievisse. In ipsa Gallia
cognostis in praedia privata Quincti Sex. Naevium
non venisse; denique ex hoc ipso saltu, quem per
vim expulso socio possedit, servos privatos Quincti
omnes eiectos *non* esse. Ex quo et ex ceteris dictis,
factis cogitatisque Sex. Naevi quivis potest intellegere
istum nihil aliud egisse neque nunc agere, nisi uti per
vim, per iniuriam, per iniquitatem iudicii totum
agrum, qui communis est, suum facere possit.

91 XXX. Nunc causa perorata res ipsa et periculi
magnitudo, C. Aquili, cogere videtur, ut te atque eos,
qui tibi in consilio sunt, obsecret obtesteturque P.
Quinctius per senectutem ac solitudinem suam nihil
aliud, nisi ut vestrae naturae bonitatique obsequamini,
ut, cum veritas cum hoc faciat, plus huius inopia
possit ad misericordiam quam illius opes ad crudeli-
92 tatem. Quo die ad te iudicem venimus, eodem die
illorum minas, quas ante horrebamus, neglegere
coepimus. Si causa cum causa contenderet, nos
nostram perfacile quoivis probaturos statuebamus;
quod vitae ratio cum ratione vitae decerneret, idcirco
nobis etiam magis te iudice opus esse arbitrati sumus.
Ea res nunc enim in discrimine versatur, utrum
possitne se contra luxuriem ac licentiam rusticana

did he seize or even put his hand upon; he tried,
indeed, to lay hold of one, but, having been pre-
vented, he did not renew the attempt. In Gaul 90
itself Quinctius has some farms of his own, which, as
you know, Naevius never entered; lastly, you know
that Quinctius's private slaves have not all been
driven out of the same pastures of which Naevius took
possession after he had ejected his partner from
them by force. From this and all Naevius's other
words, deeds, and intentions, anyone can under-
stand that he had, and has, no other object than to
enable himself to secure the whole estate (which
belongs in common to both), as his own personal
property by violence, injustice, and unfair legal
procedure.

XXX. Now that I have finished my pleading, the 91
nature of the case and the greatness of the danger
seem to make it necessary for my client to implore
and beseech you, Aquilius, and you, his assessors,
in the name of his old age and forlorn condition,
simply to follow the dictates of your natural good-
ness of heart, so that, since he has the truth with
him, his distress may have greater power to incline
you to pity than the resources of Naevius to incline
you to cruelty. From the very day when we came 92
before you as judge we began to pay less attention
to the threats which we formerly dreaded. If it had
been merely the cause of one party contending with
the cause of another party, we felt certain that we
could easily prove the justice of ours to anyone; but
since the issue was between one mode of life and
another, for that reason we thought that we needed
you all the more as judge. For the question to be
decided is whether the rustic and simple frugality

illa atque inculta parsimonia defendere an deformata atque ornamentis omnibus spoliata nuda cupiditati
93 petulantiaeque addicatur. Non comparat se tecum gratia P. Quinctius, Sex. Naevi, non opibus, non facultate contendit; omnes tuas artes, quibus tu magnus es, tibi concedit; fatetur se non belle dicere, non ad voluntatem loqui posse, non ab afflicta amicitia transfugere atque ad florentem aliam devolare, non profusis sumptibus vivere, non ornare magnifice splendideque convivium, non habere domum clausam pudori et sanctimoniae, patentem atque adeo expositam cupiditati et voluptatibus; contra sibi ait officium, fidem, diligentiam, vitam omnino semper horridam atque aridam cordi fuisse. Ista superiora
94 esse ac plurimum posse his moribus sentit. Quid ergo est? Non usque eo tamen, ut in capite fortunisque hominum honestissimorum dominentur ii, qui relicta virorum bonorum disciplina et quaestum et sumptum Galloni sequi maluerunt atque etiam, quod in illo non fuit, cum audacia perfidiaque vixerunt. Si licet vivere eum, quem Sex. Naevius non vult, si est homini honesto locus in civitate invito Naevio, si fas est respirare P. Quinctium contra nutum dicionemque Naevi, si, quae pudore ornamenta sibi peperit,

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[a] See § 70.

[b] A public crier, who lived in the time of Lucilius, by whom he was satirized (148–103 B.C.). His great wealth and gluttony became proverbial (Horace, *Sat.* ii. 2. 46).

of my client's life can defend itself against luxury and licentiousness, or whether, disgraced and stripped of all that made it honourable, it is to be handed over naked to greed and impudence. My client does not 93
compare his influence to yours, he does not vie with you in wealth and resources; he leaves to you all the talents which have made you great; he admits that he can neither speak elegantly nor accommodate his language to the will of another; that he cannot abandon a friend in affliction and fly into the arms of another who is the favourite of fortune [a]; that he does not live in the midst of profusion and extravagance; that he does not prepare splendid and magnificent banquets; that he does not own a house that is closed to modesty and good living but open, nay, freely accessible to passion and debauchery. But on the other hand he declares that he has always cherished duty, good faith, industry, and a life that has been altogether rough and ill-provided. He is aware that the opposite mode of living is more highly thought of and has very great influence in these degenerate days. What follows? This influence, 94
however, he is aware, does not go so far as to place the civil existence and fortunes of most honourable citizens under the domination of those who have abandoned the principles of upright men and have preferred to follow the lucrative trade and luxury of Gallonius [b] and have even shown in their lives an audacity and perfidy from which he was free. If, against the wish of Naevius, he is permitted to live; if there is room for an honourable man in the State in spite of Naevius; if it is not a crime that Quinctius should breathe, although the nod and supreme power of Naevius forbid it; if, thanks to my defence,

ea potest contra petulantiam me defendente obtinere, spes est etiam hunc miserum atque infelicem aliquando tandem posse consistere. Sin et poterit Naevius id, quod libet, et ei libebit id, quod non licet, quid agendum est ? qui deus appellandus est ? cuius hominis fides imploranda est ? qui denique questus, qui maeror dignus inveniri calamitate tanta potest ?

95 XXXI. Miserum est deturbari fortunis omnibus, miserius est iniuria ; acerbum est ab aliquo circumveniri, acerbius a propinquo ; calamitosum est bonis everti, calamitosius cum dedecore ; funestum est a forti atque honesto viro iugulari, funestius ab eo, cuius vox in praeconio quaestu prostitit ; indignum est a pari vinci aut superiore, indignius ab inferiore atque humiliore ; luctuosum est tradi alteri cum bonis, luctuosius inimico ; horribile est causam capitis
96 dicere, horribilius priore loco dicere. Omnia circumspexit Quinctius, omnia periclitatus est, C. Aquili ; non praetorem modo, a quo ius impetraret, invenire non potuit, atque adeo ne unde arbitratu quidem suo postularet, sed ne amicos quidem Sex. Naevi, quorum saepe et diu ad pedes iacuit stratus obsecrans per

he can preserve the distinctions, which he has obtained for himself by his modesty, in the face of impudence, there is still hope that this miserable and unhappy man may at last be able to find rest and security. But if Naevius is able to do all that pleases him—and it will please him to do what is not permissible—what is to be done ? What god is to be appealed to ? Who among men is to be implored to give protection ? In short, what lamentation, what grief, can be found adequate to express so great a disaster ?

XXXI. It is pitiable to be ejected from all one's 95
possessions, still more pitiable to be ejected unjustly ; it is galling to be deceived by anyone, still more galling to be deceived by a kinsman ; it is a calamity to be driven out of one's property, a still greater calamity to be driven out in disgrace ; it is disastrous to be slain by a brave and honourable man, still more disastrous to be slain by one whose voice has been prostituted in the trade of a public crier ; it is mortifying to be conquered by one's equal or superior, still more mortifying to be conquered by one's inferior or by one who is beneath us ; it is grievous to be handed over with one's property to another, still more grievous to be handed over to an enemy ; it is awful to have to plead for one's life, still more awful to have to plead before having heard the charge.
Quinctius has turned his eyes everywhere, he has 96
tried all the chances of safety ; not only has he been unable to find a praetor from whom he could get justice, not even one from whom he could obtain the kind of trial he wanted ; he has not even been able to get any assistance from the friends of Naevius, at whose feet he often and for a long time prostrated himself, begging them by the immortal gods either to

deos immortales, ut aut secum iure contenderent aut
97 iniuriam sine ignominia sibi imponerent. Denique ipsius inimici vultum superbissimum subiit, ipsius Sex. Naevi lacrimans manum prehendit in propinquorum bonis proscribendis exercitatam, obsecravit per fratris sui mortui cinerem, per nomen propinquitatis, per ipsius coniugem et liberos, quibus propior P. Quinctio nemo est, ut aliquando misericordiam caperet, aliquam, si non propinquitatis, at aetatis suae, si non hominis, at humanitatis rationem haberet, ut secum aliquid integra sua fama qualibet, dum-
98 modo tolerabili, condicione transigeret. Ab ipso repudiatus, ab amicis eius non sublevatus, ab omni magistratu agitatus atque perterritus, quem praeter te appellet, habet neminem; tibi se, tibi suas omnes opes fortunasque commendat, tibi committit existimationem ac spem reliquae vitae. Multis vexatus contumeliis, plurimis iactatus iniuriis non turpis ad te, sed miser confugit; e fundo ornatissimo eiectus, ignominiis omnibus appetitus, cum illum in suis paternis bonis dominari videret, ipse filiae nubili dotem conficere non posset, nihil alienum tamen vita superiore commisit.

99 Itaque hoc te obsecrat, C. Aquili, ut, quam existimationem, quam honestatem in iudicium tuum prope acta iam aetate decursaque attulit, eam liceat ei secum ex hoc loco efferre, ne is, de cuius officio nemo

contend with him according to law or at any rate to inflict injustice upon him unaccompanied by disgrace.
Finally, he faced the haughty looks of his enemy 97
Sextus Naevius himself; he seized his hand with tears—that hand experienced in proscribing the estates of his kinsmen; he implored him by the ashes of his dead brother, in the name of the relationship which united them and of his own wife and children, whose nearest relative is Publius Quinctius, to show at length some compassion, to have some consideration, if not for their relationship, at least for his age; if not for the man himself, at least for humanity; and to come to some arrangement with him on any terms, provided only they were endurable and his reputation
were left unimpaired. Repulsed by Naevius himself, 98
having received no assistance from his enemy's friends, harassed and browbeaten by all the magistrates, he has no one to appeal to but yourself, Aquilius; to you he commits himself, to you he entrusts all his fortunes and everything he possesses; in your hands he places his reputation and all the hopes of the life that still remains to him. Worried by numerous affronts, tormented by many wrongs, he takes refuge with you, not disgraced but in misery; driven out from a rich estate, assailed by every kind of indignity, seeing this man lording it over his paternal heritage, unable to provide a dowry for his marriageable daughter, he has, in spite of this, done nothing to belie his past life.

He therefore implores you, Aquilius, to allow him 99
to carry away with him from this court the reputation and respect which he brought before your tribunal at an age when his life was nearly over and had almost run its course; he begs that he, whose fidelity to duty

umquam dubitavit, sexagesimo denique anno dedecore, macula turpissimaque ignominia notetur, ne ornamentis eius omnibus Sex. Naevius pro spoliis abutatur, ne per te fiat, quo minus, quae existimatio P. Quinctium usque ad senectutem produxit, eadem usque ad rogum prosequatur.

Sic Cicero pro Quinctio adversarii definitionem ex opinione hominum reprehendit: Si qui unum aliquem fundum quavis ratione possideat, ipsum autem dominum patiatur cetera praedia tenere, is, *inquit*, ut opinor, praedium, non bona videatur alterius possidere. *Et ponit definitionem suam*: Quid est, *inquit*, possidere? Nimirum in possessione esse earum rerum, quae possunt eo tempore possideri. *Probat Naevium non bona, sed praedium possedisse*: Cum domus erat, *inquit*, Romae, servi in ipsa Gallia privata P. Quinti praedia, quae numquam ausus es possidere; *et colligit*: Quodsi bona P. Quinti possideres, possidere omnia eo iure deberes. (*Iul. Severian.* 15 *p.* 363. 20.)

[a] The above extract from Julius Severianus, a fifth-century rhetorician and author of *Praecepta artis rhetoricae* (in C. Halm, *Rhetores Latini minores*, 1863, part i. p. 363) is inserted in *Pro Quinctio*, § 85, after the words *hoc dico*.

has never been called in question, may not, in his sixtieth year, be branded with the mark of the greatest shame and ignominy; that Sextus Naevius may not disgrace all his distinctions by wearing them as trophies; that the good name, which has accompanied him up to his old age, may not be prevented through your decision from attending him even to the grave.

Appendix to xxvii. § 85.

In this manner Cicero, in his speech in defence of Quinctius, refutes the definition given by his opponent in accordance with the common opinion: If anyone in any way takes possession of a landed estate, but allows the owner to keep his other properties, in my opinion, *says he*, he appears to possess a property, not the whole estate of another. *He then offers his own definition*: What is possession? *says he*. It is evidently to be in possession of those things which at the time can be possessed. *He proves that Naevius has not taken possession of the whole estate but only a property*: at the time when Quinctius had a house at Rome, and slaves and private properties in Gaul of which you never ventured to take possession. *He concludes with the words*: But if you possessed the goods of Publius Quinctius, you ought to have taken possession of them all in accordance with the law.[a]

THE SPEECH IN DEFENCE OF SEXTUS ROSCIUS OF AMERIA

INTRODUCTION

According to Aulus Gellius (*Noctes Atticae*, xv. 28) Cicero, when twenty-seven years of age, in 80 B.C. during the consulship of the dictator Sulla (for the second time) and of Q. Caecilius Metellus and the year after he had pleaded the cause of Publius Quinctius, defended Sextus Roscius, who had been accused of parricide. It was the first *causa publica* or criminal case in which he was engaged and is the first of his speeches mentioned by Plutarch in his life of Cicero. The orator elsewhere (*Brutus*, xc. 312) speaks of the high commendation which the speech received, and although in the *Orator* (xxx. 107) he severely criticizes its declamatory style and youthful redundancy of language, he justly prides himself on having had the courage to undertake this defence of Roscius against the powerful members of the faction of Sulla, which virtually amounted to an attack on Sulla himself (*De officiis*, ii. 14. 51). His client was triumphantly acquitted.

The case came before the *quaestio inter sicarios*, one of the standing commissions (*quaestiones perpetuae*) or criminal courts to try various offences, the first of which was held in 149 B.C. to try a case of extortion. In Cicero's time there were at least eight of such courts—for extortion, high treason, embezzlement, unlawful canvassing for office, assassi-

nation (*de sicariis*), poisoning, forgery, and violence. Each *quaestio* had a president (*quaesitor*), either one of the praetors chosen by lot, or, if their number was not sufficient, a *iudex quaestionis* (usually an ex-aedile) assisted by a number of *iudices* chosen by lot from the senators, whose functions corresponded more or less to those of the modern jurymen. No appeal was allowed from the judgement given by a *quaestio perpetua*. The *quaesitor* in the present case was M. Fannius, of whom nothing further is known, except that he had held the same position some time before.

Sextus Roscius, the father of the accused, was a well-to-do and distinguished citizen of the *municipium* of Ameria. According to Cicero, he favoured the aristocratical party represented by Sulla, or possibly he may have escaped the proscription-lists and the threatened loss of property and fortune in some other way. Anyhow, he openly showed himself at Rome and often stayed there, where he was on intimate terms and enjoyed ties of hospitality with distinguished families such as the Metelli and Scipios. One night, when returning from a dinner, he was attacked and murdered near the Pallacinian baths, his son being in the meantime at Ameria, looking after the administration of the family property. A long-standing feud had existed between him and two Amerians (probably about money or property), Titus Roscius Capito and Titus Roscius Magnus, the latter of whom was then at Rome and upon them Cicero now endeavours to bring suspicion in regard to the murder. He relates that a certain Mallius Glaucia immediately brought the news to Ameria, not to the son of the murdered man, but to

his enemy Capito. Within four days L. Cornelius Chrysogonus, a powerful freedman and favourite of Sulla who was in the dictator's camp at Volaterrae, was also informed of what had taken place. The knowledge that Sextus Roscius had left considerable property behind him led to a conspiracy being formed between Chrysogonus and the two Roscii to get rid of the young Roscius. Although the list of the proscribed had been closed (since June 1, 81) and in spite of his reputed attachment to the aristocracy, the father's name was entered on the list after his death, with the result that his goods were confiscated and became forfeit to the State. At the public sale of his property Chrysogonus bought it for the trifling sum of 2000 sesterces, although it was valued at 6,000,000, no one venturing to outbid Sulla's favourite. As his share Capito received three landed estates as his own; the remaining ten were taken over in the name of Chrysogonus by Magnus, who had been appointed his agent and business manager. Magnus comes to Ameria, takes possession of the goods and estate of the young Roscius, whom he drives out of house and home.

These violent proceedings created great anger in Ameria. The *decuriones* (senators) of the town passed a resolution that the first ten (*decem primi*, a special committee) should journey to Sulla's camp, explain to him what kind of man the elder Roscius had been and how strongly he had supported the aristocrats, and induce him to protect the good name of the dead by removing his name from the proscription-list and to restore the son to the enjoyment of his lawful inheritance. But the good intentions of the embassy were thwarted by the evil influence of

Capito, himself one of its members. The deputies approached Sulla's camp, but, in order to prevent the dictator being enlightened as to the object of their visit, Capito represented to Chrysogonus the great loss the latter would suffer if the sale of Roscius's property were cancelled, while he himself would have to fear a capital charge. In the result he succeeded in persuading the deputies to be satisfied with the promise given by Chrysogonus that he would remove the father's name from the proscription-list and help the son to regain possession of his inheritance ; and they returned to Ameria without having had a personal interview with Sulla. The conspirators, although they still possessed the goods of Sextus Roscius, felt uneasy as long as the rightful owner was alive, lest the inhabitants of Ameria might take further measures to help him, and also professed alarm lest he might be reinstated in his property if a change in public affairs took place, although Sulla had expressly provided against anything of the kind. After various attempts on his life had failed, Roscius on the advice of his friends took refuge in Rome, where he was hospitably received and found protection in the house of Caecilia, an old friend of his father. His enemies thereupon conceived the plan of accusing him of the murder of his father which they themselves had brought about. They had noticed that father and son had not been on the best of terms, although Cicero scouts the idea. It seems likely that the father, who had moved in aristocratic circles, did not like the somewhat boorish and countrified manners of his son. A certain Erucius, who had great experience as an *accusator*, a man who did not definitely know who his father was and a man of bad

character, though not without ability, was chosen as prosecutor. A number of witnesses were bribed to give evidence against Roscius, while the evidence of two slaves, who had accompanied the father to Rome at the time he was murdered, was not allowed to be given, since they had passed into the hands of Chrysogonus with the younger Roscius's belongings, and he refused to give them up for examination.

The condition of the times was favourable to such an accusation. A trial for murder had not taken place for a long time; hence public opinion was in favour of the condemnation of the first person accused of such a crime, and the accusers placed great hopes on the influence of Chrysogonus. It was thought by the accusers that fear of Sulla would prevent anyone from taking up the defence of Sextus, and that no one would dare to say a word about the sale of his goods or to reveal the conspiracy against his life. Certainly no person of importance ventured to undertake the dangerous task of opposing a powerful favourite of Sulla, but several of the nobility showed sympathy with Roscius, especially the young M. Messalla, who would himself have defended him had he been old enough, and finally persuaded the youthful Cicero to come forward as the defender of Roscius (vi–x).

Cicero's defence falls into three parts. In the first he refutes the accusations on which Erucius had attempted to found his accusation of parricide. Roscius neither wanted to kill his father, nor had the opportunity of doing so. He was on good terms with his father, who never meant to disinherit him, as Erucius is unable to prove. Again, to prove Sextus Roscius guilty of so atrocious a crime Erucius

must be able to show that his character is utterly depraved and vicious; on the contrary, he is a man of excellent character, who managed his father's property, and had the usufruct of certain farms. Further, parricide is so heinous a crime that it needs the clearest proof before a man can be thought guilty of it. Roscius had not the means of committing the crime himself, nor could he get anyone else to commit it—slaves or free men (xiii–xxix). In the second part Cicero passes from defence to attack, and endeavours, partly from the life and character of Capito and Magnus, and partly from what happened after the murder, to fix the guilt of the crime upon them. He shows that Magnus had many reasons and opportunities for murdering his client's father, and also the conduct of both after the murder was very suspicious (xxx–xlii). In the third part he directly attacks Chrysogonus. Why was the property of a patriotic citizen confiscated, and the goods of a man such as the elder Roscius (neither proscribed nor killed fighting on the enemy's side) offered so cheaply, and sold after the proscriptions had ceased? At the end of xlv there is a gap in the text in which Cicero endeavours to prove that Chrysogonus was the real author of Erucius's accusation (§ 132 note). He describes the life of Chrysogonus as frivolous and extravagant, and gives a serious warning as to the disastrous results such men's behaviour will bring upon the cause of the nobility unless it is checked (xlii–xlix). All that Roscius asks from Chrysogonus is that he should be freed from the odious charge of parricide; he leaves his property to him and is content to let him have it. Cicero finally begs the judges

not to allow Chrysogonus to rob of life the man whom he has already robbed of his fortune, nor by their verdict to make themselves the accomplices of brokers and assassins (l–liii).

After the defeat of the Marian party by Sulla at the battle of the Colline Gate on November 1, 82, the victor behaved with atrocious cruelty. Those who had taken a prominent part in the late war, the relatives of Marius, and 6000 prisoners were put to death. Murders were committed by the soldiery in the streets, houses, and temples. When the senators in alarm wanted to know who were destined to die, Sulla had their names written on a white tablet which was put up in the forum. Every person who gave shelter to anyone whose name appeared on this list was condemned and a price of 1200 denarii (about £450) set upon his head. The reward offered was an incentive to murder, as also private greed or the desire to satisfy revenge. The heads of those who were slain were exposed in the Forum on the Rostra or at the Servilian lake (§ 89). Nearly 3000 perished at Rome, 12,000 at Praeneste, and many in the Italian cities which had supported Marius and his party. Proscription and murder were rife everywhere.

While this was the state of affairs, Sulla reformed the constitution and, amongst other things, concentrated all power in the hands of the senate. By the *lex Valeria* he secured approval for all his previous acts of violence, and by a law *de proscriptione* gave it a judicial form. All who fell fighting against him or were proscribed, were declared enemies of the State, their descendants were excluded from holding posts of honour, and their property was confiscated and

sold, the final day for proscription and confiscation being fixed for June 1, 81, a point to which Cicero attaches importance in the speech. Greedy "brokers" hastened to the Forum, where the goods were sold by auction under the *hasta* (the symbol of booty taken in war), and, after making allowance for some of the money thereby obtained being squandered and for presents given by Sulla to his supporters, a huge amount (350,000,000 sesterces) flowed into the treasury.

Sulla was of course the supporter of Chrysogonus, his freedman, and it is interesting to notice how cleverly Cicero pretends that Sulla's cruelties were acts committed by his agents, of which he himself knew nothing, because his mind was occupied with so many important things, that the wonder is that more did not escape his notice. The attack upon Chrysogonus is in reality a veiled attack upon Sulla, and it required a good deal of courage in a young man like Cicero to make it.

PARRICIDE

The crime of parricide, of which Cicero's client is accused, meant in his time in the narrower sense the murder of a father; in the wider sense, of one's nearest relatives. It was also applied to the murder of a Roman citizen, or of the fatherland. It remains uncertain whether in old times every intentional murder was called *parricidium*. This is supported by the *quaestores parricidii* (the trackers of murder), officials to whom the conduct of criminal trials was delegated by the kings, and an old law of Numa (*si*

qui hominem liberum dolo sciens morti duit, parricidas esto). This view is held by Mommsen, who translates the word as "cruel, brutal murder," while others confine it to the murder of a father.[a] In this narrower sense it does not often occur in early Roman times. The first instance of a parricide is Lucius Hostius after the second Punic War, of a matricide Publicius Malleolus at the time of the Cimbrian War. From the proceedings we learn certain particulars. After his condemnation the criminal's face was covered with a wolf's skin, wooden shoes (*soleae*, perhaps fetters) were put on his feet, to prevent him polluting the air with his breath or the earth by treading upon it. He was then taken to prison, where he remained till the sack was ready in which he was carried down to the sea or river, into which he was to be thrown. Later legal authorities tell us that "according to the custom of our ancestors it was established that the parricide should be beaten with blood-red rods, sewn in a leather sack together with a dog (an animal despised by Greeks and Romans), a cock (like the parricide devoid of all feelings of affection), a viper (whose mother dies when it is born), and an ape (a caricature of a man), and the sack thrown into the depths of the sea or a river."[b] The object of this was to deprive him of all enjoyment of the elements: Justinian, *Institutiones* (iv. 18. 6): *ut omni elementorum usu vivus carere incipiat et ei caelum superstiti, terra mortuo auferatur*. The above explanation (Rein,

[a] Older derivations are *patrem, parentem caedere*. A recent suggestion is that the word comes from *parēre* (to appear) and means a "notorious" murder of which anyone is legally convicted (spelt *paricidium*).

[b] Modestinus, *Dig.* xlviii. 9. 9.

Kriminalrecht der Römer) is disputed by Landgraf (in his larger edition of this speech, 1882). He maintains that both the dog and cock are sacred animals, the dog as the protector of hearth and home, the cock as the herald of the morning and the symbol of light and the sun. Consequently, as the sack is thrown into the water, since this element was supposed to purify a man from blood-guiltiness ; so the cock and dog are added according to the old view, that they were the enemies and conquerors of the bad, represented by the ape and viper. Thus the union of the two pairs in the sack indicates the struggle between the good and the bad. Yet another explanation is that the watcher (the dog) and the waker (the cock) who had failed in their duty as protectors of their master, were taken from his house, and the constant enemy and the repulsive caricature of man from the wilderness as an expiatory sacrifice to the offended gods.

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PRO SEXTO ROSCIO AMERINO

1 I. Credo ego vos, iudices, mirari, quid sit, quod, cum tot summi oratores hominesque nobilissimi sedeant, ego potissimum surrexerim, qui neque aetate neque ingenio neque auctoritate sim cum his, qui sedeant, comparandus. Omnes hi, quos videtis adesse, in hac causa iniuriam novo scelere conflatam putant oportere defendi, defendere ipsi propter iniquitatem temporum non audent. Ita fit, ut adsint propterea, quod officium sequuntur, taceant autem idcirco, quia
2 periculum vitant. Quid ergo? audacissimus ego ex omnibus? Minime. An tanto officiosior quam ceteri? Ne istius quidem laudis ita sum cupidus, ut aliis eam praereptam velim. Quae me igitur res praeter ceteros impulit, ut causam Sex. Rosci reciperem? Quia, si qui istorum dixisset, quos videtis adesse, in quibus summa auctoritas est atque amplitudo, si verbum de re publica fecisset, id quod in hac causa fieri necesse est, multo plura dixisse, quam dixisset,
3 putaretur; ego autem si omnia, quae dicenda sunt,

IN DEFENCE OF SEXTUS ROSCIUS OF AMERIA

I. Gentlemen of the jury, you probably wonder 1
why, when so many eminent orators and illustrious citizens remain seated, it is I, rather than any of them, who have risen to speak, though neither in age, nor ability, nor authority, can I be compared with them. All those whom you see here supporting the accused are of opinion that in this case an unjust charge, concocted by an unexampled act of villainy, should be repelled, but dare not undertake the task themselves owing to the unfavourable conditions of the times. Hence it is that they are present in fulfilment of a duty, but remain silent because they are desirous of avoiding danger. What then? Am I the boldest of all? 2
By no means. Or am I so much more eager to render a service than the rest? I am not so eager even for that title to praise, as to wish others to be deprived of it. What then was the reason that impelled me, more than anyone else, to undertake the defence of Sextus Roscius? The reason is this. If any of those whom you see here, in whom the highest authority and dignity are vested, had risen to speak and uttered a word about public affairs—a thing impossible to avoid doing in a case like this—it would be made out that he had said much more than he really did. On 3
the other hand, as for me, even if I were to say freely

libere dixero, nequaquam tamen similiter oratio mea exire atque in volgus emanare poterit; deinde quod ceterorum neque dictum obscurum potest esse propter nobilitatem et amplitudinem neque temere dicto concedi propter aetatem et prudentiam; ego si quid liberius dixero, vel occultum esse, propterea quod nondum ad rem publicam accessi, vel ignosci adulescentiae poterit; tametsi non modo ignoscendi ratio, verum etiam cognoscendi consuetudo iam de
4 civitate sublata est. Accedit illa quoque causa, quod a ceteris forsitan ita petitum sit, ut dicerent, ut utrumvis salvo officio facere se posse arbitrarentur; a me autem ii contenderunt, qui apud me et amicitia et beneficiis et dignitate plurimum possunt, quorum ego nec benevolentiam erga me ignorare nec auctoritatem aspernari nec voluntatem neglegere debe-
5 bam. II. His de causis ego huic causae patronus exstiti non electus unus, qui maximo ingenio, sed relictus ex omnibus, qui minimo periculo possem dicere, neque uti satis firmo praesidio defensus Sex. Roscius, verum uti ne omnino desertus esset.

Forsitan quaeratis, qui iste terror sit et quae tanta formido, quae tot ac tales viros impediat, quo minus pro capite et fortunis alterius, quem ad modum consueverunt, causam velint dicere. Quod adhuc vos ignorare non mirum est, propterea quod consulto ab accusatoribus eius rei, quae conflavit hoc iudicium,

[a] He had held no public office and this was the first *causa publica* (criminal case) in which he was engaged.

[b] It was very courageous on Cicero's part to make this statement, really a veiled attack upon Sulla. His venturing to attack Chrysogonus, a favourite and influential freedman of the dictator, was equally courageous, as also was his onslaught upon Naevius in *Pro Quinctio.*

all that there is to be said, my words will by no means be spread abroad in the same manner and become public property. In the next place, no word of theirs can pass unnoticed, owing to their rank and dignity, nor can any rashness of speech be allowed in their case owing to their age and ripe experience; whereas, if I speak too freely, my words will either be ignored, because I have not yet entered public life,[a] or pardoned owing to my youth, although not only the idea of pardon, but even the custom of legal inquiry has now been abolished from the State.[b] A 4
further reason is this: while perhaps the way in which others were asked to speak on behalf of Roscius may have been such that they fancied they were at liberty either to consent or refuse without violating their obligations, I have been pressed to do so by men whose friendship, acts of kindness and rank have the greatest weight with me, whose goodwill towards myself I was bound not to ignore, nor to disdain their authority, nor to slight their wishes.

II. It is for these reasons that I have come forward 5
to undertake the defence in this cause. I have been chosen before all others, not as the most gifted orator, but as the only one left who could speak with the least risk; I have been chosen not that Sextus Roscius might be adequately defended, but to prevent his being altogether abandoned.

You may perhaps ask, what is the meaning of that terror, that dread, which prevents so many and such eminent men from consenting, in accordance with their constant practice, to plead the cause of one whose civil rights and property are at stake. It is not surprising that you are still in ignorance of this, since the accusers have purposely avoided mentioning the

6 mentio facta non est. Quae res ea est? Bona patris huiusce Sex. Rosci, quae sunt sexagiens, quae de viro clarissimo et fortissimo, L. Sulla, quem honoris causa nomino, duobus milibus nummum sese dicit emisse adulescens vel potentissimus hoc tempore nostrae civitatis, L. Cornelius Chrysogonus. Is a vobis, iudices, hoc postulat, ut, quoniam in alienam pecuniam tam plenam atque praeclaram nullo iure invaserit, quoniamque ei pecuniae vita Sex. Rosci obstare atque officere videatur, deleatis ex animo suo suspicionem omnem metumque tollatis; sese hoc incolumi non arbitratur huius innocentis patrimonium tam amplum et copiosum posse obtinere, damnato et eiecto sperat se posse, quod adeptus est per scelus, id per luxuriam effundere atque consumere. Hunc sibi ex animo scrupulum, qui se dies noctesque stimulat ac pungit, ut evellatis, postulat, ut ad hanc suam praedam tam nefariam adiutores vos profiteamini.

7 Si vobis aequa et honesta postulatio videtur, iudices, ego contra brevem postulationem adfero et, quo modo mihi persuadeo, aliquanto aequiorem. III. Primum a Chrysogono peto, ut pecunia fortunisque nostris contentus sit, sanguinem et vitam ne petat; deinde a vobis, iudices, ut audacium sceleri resistatis, innocentium calamitatem levetis et in causa Sex.

[a] 1000 sesterces are commonly said to equal about £8, but, owing to changes in the value of money, their present equivalent would be much higher.

[b] Chrysogonus is ironically supposed to make this excuse.

real reason that has brought about this trial. What 6
then is this reason? The property of the father of my client Sextus Roscius is valued at 6,000,000 sesterces,[a] and it is from a most valiant and illustrious citizen, Lucius Sulla (whose name I mention with respect), that a young man, at the present time perhaps the most powerful in the State, claims to have bought the same for 2000 sesterces—I mean Lucius Cornelius Chrysogonus. What he demands from you is this, that because the excuse for his demand was his illegal seizure of this rich and splendid property of another,[b] and because the existence of Sextus Roscius appears to be a hindrance and an obstacle to his enjoyment of it, you should therefore remove all uneasiness from his mind and put an end to his apprehension. As long as Sextus Roscius is alive, Chrysogonus thinks himself unable to retain possession of the large and rich inheritance of an innocent man like my client; but if he is condemned and driven out of his country, he hopes to be able to squander and dissipate in luxury and extravagance what he has obtained by crime. He calls upon you to remove this anxiety from his mind, which torments and stings him night and day, and to avow yourselves his supporters in securing this ill-gotten booty.

If this demand seems to you fair and honourable, 7
gentlemen, I, on the other hand, put forward another demand, which is modest, and, I feel convinced, very much more reasonable.

III. In the first place, I request Chrysogonus to be satisfied with our wealth and property, and not to ask for our life-blood; secondly, I ask you, gentlemen, to resist the villainy of audacious rascals, to alleviate the misfortunes of the innocent, and in the

Rosci periculum, quod in omnes intenditur, propulsetis.
8 Quodsi aut causa criminis aut facti suspicio aut quaelibet denique vel minima res reperietur, quam ob rem videantur illi non nihil tamen in deferendo nomine secuti, postremo si praeter eam praedam, quam dixi, quicquam aliud causae inveneritis, non recusamus, quin illorum libidini Sex. Rosci vita dedatur. Sin aliud agitur nihil, nisi ut iis ne quid desit, quibus satis nihil est, si hoc solum hoc tempore pugnatur, ut ad illam opimam praeclaramque praedam damnatio Sex. Rosci velut cumulus accedat, nonne cum multa indigna, tum vel hoc indignissimum est, vos idoneos habitos, per quorum sententias iusque iurandum id assequantur, quod antea ipsi scelere et ferro adsequi consueverant? qui ex civitate in senatum propter dignitatem, ex senatu in hoc consilium delecti estis propter severitatem, ab his hoc postulare homines sicarios atque gladiatores, non modo ut supplicia vitent, quae a vobis pro maleficiis suis metuere atque horrere debent, verum etiam ut spoliis ex hoc iudicio ornati auctique discedant?

9 IV. His de rebus tantis tamque atrocibus neque satis me commode dicere neque satis graviter conqueri neque satis libere vociferari posse intellego. Nam commoditati ingenium, gravitati aetas, liber-

[a] To make up for the reduced number of senators resulting from the civil wars, Sulla added 300 of the noblest equites to that body. The functions of *iudices* in criminal trials originally belonged to the senators, were transferred to the *equites* by Gaius Gracchus, and restored to the senate by Sulla. The words *propter severitatem* have been much discussed. Perhaps the *iudex*, to whom the *quaestio inter sicarios* fell, had the first pick of the senators, and secured those who were distinguished by their strict justice to form his *consilium iudicum*.

cause of Sextus Roscius to avert a danger which threatens us all. But if any ground for the accusa- 8
tion, any suspicion of guilt or even the slightest thing can be discovered, which would make them appear to have had at least some reason for bringing the charge, and lastly if you find any other explanation of it than the booty of which I have spoken, we make no objection to the life of Roscius being abandoned to their passion. But if the only issue is that of satisfying the wants of those who are never satisfied, if the only object of the present struggle is to crown the seizure of that rich and splendid booty by the condemnation of Sextus Roscius, is it not the greatest of all these indignities that you should be thought capable of helping them, by your vote given under oath, to obtain what they themselves had formerly been accustomed to obtain by crime and the sword? You were elected into the senate from the rest of the citizens owing to your merit, and have been summoned from the senate to form this court owing to your strict sense of justice[a]; is it from you that these fellows, assassins and gladiators, demand not only that they may escape the punishment which they ought to fear and dread from you owing to their misdeeds, but also that they may leave the court adorned and enriched with their spoils?

IV. Of crimes so great and so atrocious as these I 9
feel that I can neither speak in appropriate language, nor make my complaint with sufficient impressiveness, nor give vent to my indignation with sufficient freedom; my poor abilities, my youth, and the times in which we live prevent the use of appropriate language,

tati tempora sunt impedimento. Huc accedit summus timor, quem mihi natura pudorque meus attribuit et vestra dignitas et vis adversariorum et Sex. Rosci periculum.[1] Quapropter vos oro atque obsecro, iudices, ut attente bonaque cum venia verba
10 mea audiatis. Fide sapientiaque vestra fretus plus
oneris sustuli, quam ferre me posse intellego. Hoc onus si vos aliqua ex parte adlevabitis, feram, ut potero, studio et industria, iudices ; sin a vobis, id quod non spero, deserar, tamen animo non deficiam et id, quod suscepi, quoad potero, perferam. Quod si perferre non potero, opprimi me onere officii malo quam id, quod mihi cum fide semel impositum est, aut propter perfidiam abicere aut propter infirmitatem animi deponere.

11 Te quoque magno opere, M. Fanni, quaeso, ut, qualem te iam antea populo Romano praebuisti, cum huic eidem quaestioni iudex praeesses, talem te et nobis et rei publicae hoc tempore impertias. V. Quanta multitudo hominum convenerit ad hoc iudicium, vides ; quae sit omnium mortalium expectatio, quae cupiditas, ut acria ac severa iudicia fiant, intellegis. Longo intervallo iudicium inter sicarios hoc primum committitur, cum interea caedes indignissimae maximaeque factae sunt; omnes hanc quaestionem te praetore manifestis male-

[1] periculum *Bake* : pericula MSS.

[a] *i.e.* best fitted to deal with (reading *dignissimam* with Madvig and Clark). Among other numerous conjectures are *inimicissimam*; *remissionem sperant laturam*; *in manifestis . . . sanguine non dimissum iri sperant* (G. Landgraf in *Rheinisches Museum*, 1901). The reading of the MSS. is *dimissui* or *dimissius*. A noun *dimissus* in the sense of "release" does not appear to exist or *dimissui* might stand.

impressiveness, and freedom of speech. A further obstacle is the excessive nervousness imposed upon me by my natural modesty, by your dignity, the power of my opponents, and the peril of Sextus Roscius. For these reasons, gentlemen, I beg and implore you to listen to my words with attention
and kindly indulgence. Relying on your integrity 10
and good sense, I feel that I have taken upon myself a burden heavier than I can bear. If you lighten this burden to some extent, I will bear it as well as I can, gentlemen, by dint of zeal and energy ; but if I am abandoned by you—which I do not expect—I will not lose courage, but will accomplish to the best of my ability the task which I have undertaken. But if I cannot accomplish it, I prefer to succumb to the burden of duty rather than to renounce through treachery or abandon through lack of courage a task which has once been imposed upon me in reliance upon my good faith.

You also, Marcus Fannius, I earnestly request to 11
show yourself to us and the republic to-day such a man as you did on a previous occasion to the people, when you presided over a similar court.

V. You see what a crowd has assembled at this trial ; you are aware what everyone expects, what everyone eagerly desires—strict and severe sentences. After a long interval this is the first trial for murder that has taken place, although in the meantime there have been a large number of atrocious assassinations ; everyone hopes that, under your praetorship, this court will prove most worthy of[a]

Richter-Fleckeisen gives *e manifestis . . . sanguine vindicationem sui sperant futuram*, when *vindicatio* is explained to mean "release" or "defence."

ficiis cotidianoque sanguine dignissimam sperant
futuram.

12 Qua vociferatione in ceteris iudiciis accusatores
uti consueverunt, ea nos hoc tempore utimur, qui
causam dicimus. Petimus abs te, M. Fanni, a vobis-
que, iudices, ut quam acerrime maleficia vindicetis,
ut quam fortissime hominibus audacissimis resistatis,
ut hoc cogitetis, nisi in hac causa, qui vester animus
sit, ostendetis, eo prorumpere hominum cupiditatem
et scelus et audaciam, ut non modo clam, verum
etiam hic in foro ante tribunal tuum, M. Fanni, ante
pedes vestros, iudices, inter ipsa subsellia caedes
13 futurae sint. Etenim quid aliud hoc iudicio temp-
tatur, nisi ut id fieri liceat? Accusant ii, qui in for-
tunas huius invaserunt, causam dicit is, cui praeter
calamitatem nihil reliquerunt; accusant ii, quibus
occidi patrem Sex. Rosci bono fuit, causam dicit is,
cui non modo luctum mors patris attulit, verum
etiam egestatem; accusant ii, qui hunc ipsum
iugulare summe cupierunt, causam dicit is, qui
etiam ad hoc ipsum iudicium cum praesidio venit, ne
hic ibidem ante oculos vestros trucidetur; denique
accusant ii, quos populus poscit, causam dicit is, qui
14 unus relictus ex illorum nefaria caede restat. Atque
ut facilius intellegere possitis, iudices, ea, quae facta
sunt, indigniora esse, quam haec sunt, quae dicimus,
ab initio res quem ad modum gesta sit, vobis ex-
ponemus, quo facilius et huius hominis innocen-
tissimi miserias et illorum audaciam cognoscere
possitis et rei publicae calamitatem.

open crimes and daily bloodshed. The vehement 12
appeal which accusers are accustomed to make in
other trials, we, the accused, make to-day. We ask
Marcus Fannius, and you, gentlemen, to punish crimes
with the utmost severity, to resist the most audacious
of men with all your courage, and to bear in mind
that, unless you show the real spirit by which you are
animated, human passion, villainy, and audacity are
likely to break bounds to such an extent that murders
will be committed, not only in secret, but even here
in the forum before your tribunal, Marcus Fannius,
at your feet, gentlemen of the jury, and amidst the
benches themselves on which you sit. For what is 13
the aim of this trial, if not that murder may be com-
mitted with impunity? They are the accusers, who
have laid hands upon the property of my client, he is
the defendant, to whom they have left nothing but
ruin; they are the accusers, who profited by the
murder of my client's father, he is the defendant, to
whom his father's death brought not only sorrow, but
also poverty; they are the accusers, who passionately
desired to murder my client, he is the defendant who is
obliged to present himself even before this tribunal with
an escort, for fear he may be killed in this very same
spot before your eyes; lastly, they are the accusers,
whose trial the people demands, he is the defendant,
who is the sole survivor of their infamous massacre.

And that you may more readily understand, gentle- 14
men, that the actual deeds are more outrageous than
my description of them, we will put before you the
course of events from the beginning; you will then find
it easier to appreciate the misfortunes of this com-
pletely innocent man, the audacity of his enemies,
and the deplorable condition of the State.

15 VI. Sex. Roscius, pater huiusce, municeps Amerinus fuit, cum genere et nobilitate et pecunia non modo sui municipii, verum etiam eius vicinitatis facile primus, tum gratia atque hospitiis florens hominum nobilissimorum. Nam cum Metellis, Serviliis, Scipionibus erat ei non modo hospitium, verum etiam domesticus usus et consuetudo, quas, ut aequum est, familias honestatis amplitudinisque gratia nomino. Itaque ex omnibus suis commodis hoc solum filio reliquit; nam patrimonium domestici praedones vi ereptum possident, fama et vita innocentis ab hos-
16 pitibus amicisque paternis defenditur. Hic cum omni tempore nobilitatis fautor fuisset, tum hoc tumultu proximo, cum omnium nobilium dignitas et salus in discrimen veniret, praeter ceteros in ea vicinitate eam partem causamque opera, studio, auctoritate defendit. Etenim rectum putabat pro eorum honestate se pugnare, propter quos ipse honestissimus inter suos numerabatur. Posteaquam victoria constituta est ab armisque recessimus, cum proscriberentur homines atque ex omni regione caperentur ii, qui adversarii fuisse putabantur, erat ille Romae frequens atque in foro et in ore omnium cotidie versabatur, magis ut exultare victoria nobili-

[a] An Umbrian mountain town (mod. Amelia), on a hill about fifty miles north of Rome, between the valleys of the Tiber and Nar. A *municipium* possessed the right of Roman citizenship, but was governed by its own laws and administered on the Roman model.

[b] *Hospitium* refers to the relations of hospitality enjoyed from very ancient times when there were no inns by the Roscii with the families mentioned. Such *hospitium* went down to their descendants. *Domesticus usus et consuetudo* refers to ordinary social intercourse, about which there was nothing

VI. Sextus Roscius, my client's father, was a 15
citizen of the free town of Ameria[a]; by birth, descent, and fortune he was easily the chief man, not only in his own town, but also in the neighbourhood, while his influence and relations of hospitality with those of the highest rank enhanced his reputation. For he not only enjoyed relations of hospitality[b] with the Metelli, Servilii, and Scipios, but also private intercourse and intimacy with those families, whose names I mention with the respect due to their high character and dignity. Well, then, of all the advantages of his position this was the only one which he bequeathed to his son, whose inheritance is in the hands of brigands belonging to his family, who have seized it by force, while the honour and life of the innocent son are defended by the guests and friends
of the father. Since the latter had always supported 16
the nobles, especially in the latest disturbances,[c] when the position and safety of all persons of distinction were in danger, he, more than anyone else in the neighbourhood, defended their party and upheld their cause by his efforts, zeal, and influence. In fact, he thought it his duty to fight for the honour of those to whom he owed it that he was reckoned a most honourable man among his fellow-citizens. After their victory had been established and we were no longer at war, when proscription was rife and those who were supposed to have belonged to the opposite party were being seized in every quarter, he was constantly in Rome, and showed himself every day in the forum before the eyes of all, as if he were triumphing

binding as in the case of *hospitium*, which could not be dissolved except by a formal act.

[c] The Civil War between Marius and Sulla.

tatis videretur quam timere, ne quid ex ea calamitatis sibi accideret.

17 Erant ei veteres inimicitiae cum duobus Rosciis Amerinis, quorum alterum sedere in accusatorum subselliis video, alterum tria huiusce praedia possidere audio; quas inimicitias si tam cavere potuisset, quam metuere solebat, viveret. Neque enim, iudices, iniuria metuebat. Nam duo isti sunt T. Roscii (quorum alteri Capitoni cognomen est, iste, qui adest, Magnus vocatur) homines eius modi: alter plurimarum palmarum vetus ac nobilis gladiator habetur, hic autem nuper se ad eum lanistam contulit, quique[1] ante hanc pugnam tiro esset, quod sciam, facile ipsum magistrum scelere audaciaque superavit.

18 VII. Nam cum hic Sex. Roscius esset Ameriae, T. autem iste Roscius Romae, cum hic filius assiduus in praediis esset cumque se voluntate patris rei familiari vitaeque rusticae dedisset, ipse autem frequens Romae esset, occiditur ad balneas Pallacinas rediens a cena Sex. Roscius. Spero ex hoc ipso non esse obscurum, ad quem suspicio maleficii pertineat; verum id, quod adhuc est suspiciosum, nisi perspicuum res ipsa fecerit, hunc adfinem culpae iudicatote.

19 Occiso Sex. Roscio primus Ameriam nuntiat Mal-

[1] qui *MSS.*: quique *Halm.*

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[a] Cicero uses the word rather in the sense of "cut-throat" or "ruffian."
[b] Near the Circus Flaminius.

in the victory of the nobles rather than fearing that it might prove disastrous to him.

A long-standing feud had existed between him and two other Roscii of Ameria, one of whom I see sitting on the accusers' benches, while I hear that the other is in possession of three farms that belong to my client; and had he been able to be as much on his guard against this hostility, as he was continually in fear of it, he would be alive to-day. For, in fact, his fears were not unfounded. For those two Titi Roscii—one of whom is surnamed Capito, while the other, who is present, is called Magnus—are men of the following character. The first is reputed to be a famous and experienced gladiator,[a] who has won many victories, the second has recently betaken himself to the other as trainer, and although, so far as I know, before this last coup he was only a novice, he now easily surpasses the master himself in villainy and audacity. 17

VII. Now, while my client was at Ameria, and that Titus Roscius Magnus at Rome; while the son was always engaged upon his farms, and, in accordance with his father's wish, devoted himself to the management of the estate and a country life, whereas Magnus was constantly at Rome, the father, while returning one evening from supper, was killed near the baths of Pallacina.[b] I hope what I have stated leaves no doubt on whom suspicion of having committed the crime falls; but unless the facts themselves change what is still only suspicion into certainty, you are welcome to decide that my client is implicated in the murder. 18

After Sextus Roscius had been killed, the news was first brought to Ameria by one Mallius Glaucia, a 19

lius Glaucia quidam, homo tenuis, libertinus, cliens et familiaris istius T. Rosci, et nuntiat domum non filii, sed T. Capitonis inimici; et cum post horam primam noctis occisus esset, primo diluculo nuntius hic Ameriam venit; decem horis nocturnis sex et quinquaginta milia passuum cisiis pervolavit, non modo ut exoptatum inimico nuntium primus adferret, sed etiam cruorem inimici quam recentissimum telumque paulo ante e corpore extractum ostenderet.
20 Quadriduo, quo haec gesta sunt, res ad Chrysogonum in castra L. Sullae Volaterras defertur; magnitudo pecuniae demonstratur; bonitas praediorum (nam fundos decem et tres reliquit, qui Tiberim fere omnes tangunt), huius inopia et solitudo commemoratur; demonstrant, cum pater huiusce Sex. Roscius, homo tam splendidus et gratiosus, nullo negotio sit occisus, perfacile hunc hominem incautum et rusticum et Romae ignotum de medio tolli posse; ad
21 eam rem operam suam pollicentur. VIII. Ne diutius teneam, iudices, societas coitur. Cum iam proscriptionis mentio nulla fieret, cum etiam qui antea metuerant redirent ac iam defunctos sese periculis arbitrarentur, nomen refertur in tabulas Sex. Rosci,

man of no means, a freedman, a client and intimate acquaintance of this Titus Roscius, and brought, not to the son, but to his father's enemy, Titus Capito. Although the murder had been committed after the first hour of the night, the messenger reached Ameria at daybreak. During the night, in ten hours, with relays of light vehicles, he rapidly covered fifty-six miles, not only to be the first to bring the longed for message to the enemy, but also to show him the still reeking blood of his enemy and the dagger just pulled out of
his body. Four days after these events, the affair 20
was reported to Chrysogonus in Sulla's camp at Volaterrae.[a] Roscius's fortune was known to be large, the excellence of his estate (for he left thirteen farms[b] nearly all on the borders of the Tiber) and my client's helplessness and isolation were dwelt upon. It was represented that, since his father, a man of such distinction and popularity, had been killed without any difficulty, it would be very easy to get rid of the son, unsuspicious as he was, living in the country, and unknown in Rome. The Roscii
promised their assistance for this purpose. VIII. Not 21
to detain you longer, gentlemen, the partnership was formed.

Although at this time proscription was no longer mentioned, and even those who had formerly been kept away by fear returned, thinking that they were now out of danger, the name of Sextus Roscius, a zealous supporter of the nobles, was entered on the

[a] In Etruria, a very strong position on the top of a lofty hill. Here the remnants of the Marian party resisted the attacks of Sulla for two years.

[b] *Fundus*, properly an estate on which there is a building ("ager cum aedificio fundus dicitur," Digest, i. 16. 211).

hominis studiosissimi nobilitatis; manceps fit Chrysogonus; tria praedia vel nobilissima Capitoni propria traduntur, quae hodie possidet; in reliquas omnes fortunas iste T. Roscius nomine Chrysogoni, quem ad modum ipse dicit, impetum facit. Haec bona sexagiens HS emuntur duobus milibus nummum. Haec omnia, iudices, imprudente L. Sulla facta esse certo
22 scio. Neque enim mirum, cum eodem tempore et ea, quae praeterita sunt, reparet[1] et ea, quae videntur instare, praeparet, cum et pacis constituendae rationem et belli gerendi potestatem solus habeat, cum omnes in unum spectent, unus omnia gubernet, cum tot tantisque negotiis distentus sit, ut respirare libere non possit, si aliquid non animadvertat, cum praesertim tam multi occupationem eius observent tempusque aucupentur, ut, simul atque ille despexerit, aliquid huiusce modi moliantur. Huc accedit, quod, quamvis ille felix sit, sicut est, tamen in tanta felicitate nemo potest esse, in magna familia qui neminem

[1] *In the* MSS. *a word is omitted between* sunt *and* ea. *Other suggestions are* sanet *is healing*, recreet, *with much the same sense as* reparet (*Lambinus*).

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[a] Not the *tabulae* set up by Sulla after the battle at the Colline Gate containing the names of those on whose head a price was set, but the proscriptions legalized by the *lex Valeria*, which authorized Sulla to order the punishment of death. The *lex Cornelia de proscriptione* contained certain alterations in detail, such as that the goods of the proscribed and of those who fell in the enemy's army should be sold for the benefit of the State and their sons and grandsons deprived of the *ius honorum*. An end was put to these proscriptions on June 1, 81. Thus the elder Roscius's name was not in the lists before this date, he was not one of the old *proscripti*, since that date was past, but was *in proscriptorum numerum relatus* in order that his goods might

proscription-list[a]; Chrysogonus became the purchaser.[b] Three farms, perhaps the best known, were handed over to Capito as his own property, and he is in possession of them this very day. As for the rest of the property, this Titus Roscius, as he himself says, seized it in the name of Chrysogonus. This property, valued at 6,000,000 sesterces, was bought for 2000 sesterces. I am convinced, gentlemen, that
all this took place without Sulla's knowledge. For 22
at the time when he is repairing the past and preparing for the possible emergencies of the future; when he alone possesses the means of establishing peace and the power of waging war; when all eyes are fixed upon him alone, and he alone is absolute ruler; when he is distracted by so many and such important affairs that he cannot even breathe freely, we ought not to be surprised if something escapes his notice, especially as so many are on the look-out for the time when he is busy and are watching for an opportunity, as soon as he is off his guard, to start some such plan as this. Add to this that, although he is "fortunate,[c]" as he really is, no one can be so fortunate as not to have

be sold. He was not *proscriptus* according to the law. Mommsen on the meaning of the word *proscriptio* remarks: "It is a general term for any kind of notice, and not confined as a technical term to the regular penal code of the Romans. Sulla made it a word that inspired terror, but it was not a legal word in that sense. In legal language (without any addition such as *hominum*) it simply meant the surrender and confiscation of a man's estate (not outlawry) which could be sold for the benefit of the State (from *proscribere*, to advertise, give notice of sale)."

[b] *Manceps* is one who purchases anything from the State, or agrees to pay a certain sum by way of rent.

[c] Alluding to Sulla having taken the name of Felix after he had put the younger Marius to death.

neque servum neque libertum improbum habeat.
23 Interea iste T. Roscius, vir optimus, procurator Chrysogoni, Ameriam venit, in praedia huius invadit, hunc miserum, luctu perditum, qui nondum etiam omnia paterno funeri iusta solvisset, nudum eicit domo atque focis patriis disque penatibus praecipitem, iudices, exturbat, ipse amplissimae pecuniae fit dominus. Qui in sua re fuisset egentissimus, erat, ut fit, insolens in aliena; multa palam domum suam auferebat, plura clam de medio removebat, non pauca suis adiutoribus large effuseque donabat, reliqua constituta auctione vendebat.

24 IX. Quod Amerinis usque eo visum est indignum, ut urbe tota fletus gemitusque fieret. Etenim multa simul ante oculos versabantur, mors hominis florentissimi Sex. Rosci crudelissima, filii autem eius egestas indignissima, cui de tanto patrimonio praedo iste nefarius ne iter quidem ad sepulchrum patrium reliquisset, bonorum emptio flagitiosa, possessio, furta, rapinae, donationes. Nemo erat, qui non audere[1] omnia mallet quam videre in Sex. Rosci, viri optimi atque honestissimi, bonis iactantem se ac dominantem
25 T. Roscium, Itaque decurionum decretum statim fit, ut decem primi proficiscantur ad L. Sullam doceantque eum, qui vir Sex. Roscius fuerit, con-

[1] ardere MSS., "*who would not have preferred to see everything in flames*": audere *Scheller*.

[a] *Auctio*, as contrasted with *sectio*, is the sale of individual pieces of property.

[b] When the Romans sold any land on which their kinsmen were buried, they reserved the right of road to their graves. If the property was sold without such reservation being made, the owner lost the right of access.

[c] The senate of free towns (*municipia*) such as Ameria were called *decuriones*; the *decem primi* were a special committee of ten.

some dishonest slave or freedman in a large household.

Meanwhile, the excellent Titus Roscius, the agent 23
of Chrysogonus, comes to Ameria; he seizes my client's farms, and before the unhappy man, overwhelmed with grief, had rendered all the last tokens of respect to his father, strips and throws him out of his house, and drives him headlong from the hearth and home of his fathers and his household gods, while he himself becomes the owner of an ample property. Having formerly lived in penury on his own scanty means, when he came into possession of what belonged to another, he became (as is generally the case) arrogant and extravagant. He openly carried much away to his own house, secretly removed more, distributed much with a liberal and lavish hand among those who had helped him, and sold by auction[a] what was left.

IX. This seemed so outrageous to the inhabitants of 24
Ameria that the whole town was filled with tears and lamentations. They saw many sorrowful incidents occurring at the same time; the cruel murder of Sextus Roscius, a most prosperous fellow-citizen; the scandalous poverty of his son, to whom that impious robber had not even left, out of so rich an inheritance, the right of way to the family burying-place[b]; the infamous purchase of the property, seizure, theft, robbery, donations. There was no one who would not have preferred to dare everything rather than see Titus Roscius riding the high horse and lording it over the property of Sextus Roscius, a most excellent and honourable man. Accordingly the decurions[c] 25
immediately issued a decree, in accordance with which their ten chief members were to approach Sulla and inform him what kind of man Sextus Roscius

querantur de istorum scelere et iniuriis, orent, ut et illius mortui famam et filii innocentis fortunas conservatas velit. Atque ipsum decretum, quaeso, cognoscite. DECRETUM DECURIONUM. Legati in castra veniunt. Intellegitur, iudices, id quod iam ante dixi, imprudente L. Sulla scelera haec et flagitia fieri. Nam statim Chrysogonus et ipse ad eos accedit et homines nobiles allegat, qui peterent, ne ad Sullam adirent, et omnia Chrysogonum, quae vellent, esse
26 facturum pollicerentur. Usque adeo autem ille pertimuerat, ut mori mallet quam de his rebus Sullam doceri. Homines antiqui, qui ex sua natura ceteros fingerent, cum ille confirmaret sese nomen Sex. Rosci de tabulis exempturum, praedia vacua filio traditurum, cumque id ita futurum T. Roscius Capito, qui in decem legatis erat, appromitteret, crediderunt; Ameriam re inorata reverterunt. Ac primo rem differre cotidie ac procrastinare isti coeperunt, deinde aliquanto lentius, nihil agere atque deludere, postremo, id quod facile intellectum est, insidias vitae huiusce Sex. Rosci parare neque sese arbitrari posse diutius alienam pecuniam domino
27 incolumi obtinere. X. Quod hic simul atque sensit, de amicorum cognatorumque sententia Romam con-

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[a] As they would be, if the name of Roscius was struck off the proscription list, and their confiscation and sale thereby annulled.

[b] Chrysogonus and Capito.

was, to lodge a complaint regarding the iniquitous crimes of these men, and beg him to be good enough to see that the reputation of the dead father and the fortune of the innocent son might be protected. I ask you to listen to the terms of the decree. [THE DECREE OF THE DECURIONS IS READ.] The delegation reached the camp. It is easy to see, gentlemen, that, as I have said before, all these infamous crimes were committed without the knowledge of Sulla. For Chrysogonus immediately went to meet the delegates in person and deputed certain men of rank to beg them not to approach Sulla and to promise them that Chrysogonus would do everything they wished. For he 26
was so alarmed, that he would have preferred death to Sulla being informed of what had taken place. The delegates, men of the good old stock, judged other men's character by their own, and when Chrysogonus assured them that he himself would remove Roscius's name from the proscription-list, hand over the unoccupied[a] farms to the son, and Titus Roscius Capito, who was one of the ten delegates, further guaranteed that the promise would be carried out, they believed these assurances, and returned to Ameria without having laid their case before Sulla. At first these men[b] began to put off the matter day by day and defer it till the morrow, then to act more sluggishly, to do nothing, and befool the delegates; finally, as it was quite easy to see, they began to contrive a plot against the life of my client, thinking that they could no longer retain possession of the property of another while the real owner was alive.

X. As soon as he perceived this, on the advice of 27
his friends and relatives my client took refuge in Rome, and betook himself to Caecilia, the sister of

fugit et sese ad Caeciliam, Nepotis sororem, Balearici filiam, quam honoris causa nomino, contulit, qua pater usus erat plurimum; in qua muliere, iudices, etiam nunc, id quod omnes semper existimaverunt, quasi exempli causa vestigia antiqui officii remanent. Ea Sex. Roscium inopem, eiectum domo atque expulsum ex suis bonis, fugientem latronum tela et minas recepit domum hospitique oppresso iam desperatoque ab omnibus opitulata est. Eius virtute, fide, diligentia factum est, ut hic potius vivus in reos quam occisus in proscriptos referretur.

28 Nam postquam isti intellexerunt summa diligentia vitam Sex. Rosci custodiri neque sibi ullam caedis faciendae potestatem dari, consilium ceperunt plenum sceleris et audaciae, ut nomen huius de parricidio deferrent, ut ad eam rem aliquem accusatorem veterem compararent, qui de ea re posset dicere aliquid, in qua re nulla subesset suspicio, denique ut, quoniam crimine non poterant, tempore ipso pugnarent. Ita loqui homines: "quod iudicia tam diu facta non essent, condemnari eum oportere, qui primus in iudicium adductus esset; huic autem patronos propter Chrysogoni gratiam defuturos; de bonorum venditione et de ista societate verbum esse facturum neminem; ipso nomine parricidii et atrocitate criminis fore, ut hic nullo negotio tolleretur,
29 cum ab nullo defensus esset." Hoc consilio atque

[a] See § 147.

Nepos, the daughter of Balearicus (whose name I mention with respect),[a] formerly an intimate friend of his father, a woman in whom, gentlemen, even to-day, as has always been the general opinion, there still survive, to serve as a model, traces of the old sense of duty. She took into her house Sextus Roscius, when he was destitute, driven out of his home and expelled from his property, fleeing from the daggers and threats of brigands, and assisted her friend, now overwhelmed with misfortune, whose safety was despaired of by all. Thanks to her courage, loyalty, and vigilance, his name was entered while he was alive in the list of the accused, instead of in the list of the proscribed after his death.

In fact, when these men perceived that the life of 28
Sextus Roscius was protected with the utmost vigilance and that no opportunity offered for putting him to death, they formed the villainous and audacious plan of accusing him of parricide; of procuring some experienced accuser for the purpose, who might be able to say something on a matter in which there was not even the least ground of suspicion; and lastly, since they could not bring any real charge against him, of employing the state of the times as a weapon. They said to themselves, "that public opinion, since no trials had taken place for so long a time, demanded the condemnation of the first person brought to trial; that, owing to the influence of Chrysogonus, my client would find none to defend him; that no one would say a word about the sale of the property and that partnership; that by the mere name of parricide and the odiousness of the charge he would be removed without difficulty, since he would find no one
to defend him." In pursuance of this plan, or rather 29

adeo hac amentia impulsi, quem ipsi, cum cuperent, non potuerunt occidere, eum iugulandum vobis tradiderunt.

XI Quid primum querar aut unde potissimum, iudices, ordiar aut quod aut a quibus auxilium petam? deorumne immortalium, populine Romani, vestramne, qui summam potestatem habetis hoc tempore, fidem
30 implorem? Pater occisus nefarie, domus obsessa ab inimicis, bona adempta, possessa, direpta, filii vita infesta, saepe ferro atque insidiis adpetita. Quid ab his tot maleficiis sceleris abesse videtur? Tamen haec aliis nefariis cumulant atque adaugent, crimen incredibile confingunt, testes in hunc et accusatores huiusce pecunia comparant; hanc condicionem misero ferunt, ut optet, utrum malit cervices T. Roscio dare an insutus in culleum per summum dedecus vitam amittere. Patronos huic defuturos putaverunt; desunt; qui libere dicat, qui cum fide defendat, id quod in hac causa satis est, non deest profecto,
31 iudices. Et forsitan in suscipienda causa temere impulsus adulescentia fecerim; quoniam quidem semel suscepi, licet hercules undique omnes inmineant terrores periculaque impendeant omnia, succurram atque subibo. Certum est deliberatumque, quae ad causam pertinere arbitror, omnia non modo dicere, verum etiam libenter, audacter libereque dicere; nulla res tanta exsistet, iudices, ut possit vim mihi

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[a] Magnus, who is present.
[b] Parricides were sewn up in a sack and thrown into the sea. See note at end of analysis of the speech.
[c] Others translate: "I will help and assist him."

folly, they have handed over to you to murder the man whom, in spite of their desire to do so, they have been unable to slay with their own hands.

XI. What am I to complain of first? from what point, gentlemen, am I to start by preference? What assistance am I to look for or from whom? Am I to implore the protection of the immortal gods, or that of the Roman people, or yours, gentlemen, who at this moment possess the sovereign power? The 30
father atrociously murdered, his house besieged by enemies, his property taken away, seized, and plundered, his son's life endangered, often assailed by treachery and the sword—what kind of crime seems to be missing among so many misdeeds? Yet they crown and aggravate them by other impious acts. They invent an incredible charge, bribe with my client's own money witnesses and accusers to appear against him, and reduce the wretched man to the alternative of choosing whether he prefers to offer his throat to Titus Roscius [a] or to be sewn up in a sack [b] and lose his life by a most infamous death. They thought that defenders would fail him, in fact, they have. But a man who will speak freely, who will loyally defend him—and this is enough in this case—will certainly not fail him, gentlemen. Perhaps, in 31
undertaking this case, I may have acted rashly under the impulse of youth; since, however, I have once undertaken it, though threats, terrors, and dangers of every kind menace me on every side, by Hercules! I will meet them and undergo them.[c] I have deliberately made up my mind, not only to say all that I consider has to do with the case, but also to say it as I please, boldly, and freely; no consideration shall arise of such importance, gentlemen, as to make it

32 maiorem adhibere metus quam fides. Etenim quis tam dissoluto animo est, qui haec cum videat, tacere ac neglegere possit? Patrem meum, cum proscriptus non esset, iugulastis, occisum in proscriptorum numerum rettulistis, me domo mea per vim expulistis, patrimonium meum possidetis. Quid vultis amplius? etiamne ad subsellia cum ferro atque telis venistis, ut hic aut iuguletis aut condemnetis Sex. Roscium?

33 XII. Hominem longe audacissimum nuper habuimus in civitate C. Fimbriam et, quod inter omnes constat, nisi inter eos, qui ipsi quoque insaniunt, insanissimum. Is cum curasset, in funere C. Mari ut Q. Scaevola vulneraretur, vir sanctissimus atque ornatissimus nostrae civitatis, de cuius laude neque hic locus est ut multa dicantur neque plura tamen dici possunt, quam populus Romanus memoria retinet, diem Scaevolae dixit, posteaquam comperit eum posse vivere. Cum ab eo quaereretur, quid tandem accusaturus esset eum, quem pro dignitate ne laudare quidem quisquam satis commode posset, aiunt hominem, ut erat furiosus, respondisse: "quod non totum telum corpore recepisset." Quo populus Romanus nihil vidit indignius nisi eiusdem viri

[a] Cicero here puts himself in the place of his client.

[b] A violent demagogue. In the war against Mithradates he was legate of L. Valerius Flaccus, and when the latter was killed in a mutiny he undertook command. In 84 the soldiers deserted to Sulla, who had made peace with Mithradates. Fimbria fled to Pergamum and committed suicide.

[c] Q. Mucius Scaevola, pontifex maximus, a great lawyer, consul 95 B.C. He proposed the lex Licinia Mucia prohibiting non-citizens from claiming the franchise. In 82, having been proscribed by the Marian party, he was killed by the

possible for fear to exert greater influence over me than honour. For is there a man so indifferent as to 32 keep silence and take no notice at the sight of such atrocities? You murdered my [a] father, although he was not proscribed; after he had been killed, you entered his name in the proscription-list; as for me, you drove me out of my house by force; as for my patrimony, you are in possession of it. What more do you want? have you come to these benches fully armed either to murder or secure the condemnation of Sextus Roscius?

XII. By far the most audacious man that we have 33 recently had in the State was Gaius Fimbria,[b] and also the maddest, as is generally agreed by all except those who are mad themselves. He contrived that, at the funeral of Gaius Marius, the most venerable and illustrious man in the State, Quintus Scaevola,[c] should be wounded; this is neither the place to say much in his praise, nor, if it were, could more be said than what is retained in the memory of the Roman people. Later on, being informed that Scaevola might possibly recover, Fimbria laid an accusation against him. When he was asked whatever was the reason why he was going to accuse a man whom no one could even praise as adequately as his merit deserved, he is said to have answered, like the madman that he was, "because he had not received the whole of the weapon in his body." [d] The Roman people never saw a more disgraceful spectacle than this, unless it be the murder of this same Scaevola, which had such an

praetor Damasippus. A first-class orator and jurist, he wrote a large work on the *Ius Civile*.

[d] When a gladiator was defeated, if the spectators shouted *recipe ferrum*, he had to offer his breast for the death-blow.

mortem, quae tantum potuit, ut omnes cives per-
diderit et adflixerit; quos quia servare per com-
positionem volebat, ipse ab iis interemptus est.
34 Estne hoc illi dicto atque facto Fimbriano simillimum?
Accusatis Sex. Roscium. Quid ita? Quia de mani-
bus vestris effugit, quia se occidi passus non est.
Illud, quia in Scaevola factum est, magis indignum
videtur, hoc, quia fit a Chrysogono, num est ferendum?
Nam per deos immortales! quid est in hac causa
quod defensionis indigeat? qui locus ingenium
patroni requirit aut oratoris eloquentiam magno opere
desiderat? Totam causam, iudices, explicemus atque
ante oculos expositam consideremus; ita facillime,
quae res totum iudicium contineat, et quibus de
rebus nos dicere oporteat, et quid vos sequi conveniat,
intellegetis.

35 XIII. Tres sunt res, quantum ego existimare pos-
sum, quae obstent hoc tempore Sex. Roscio, crimen
adversariorum et audacia et potentia. Criminis con-
fictionem accusator Erucius suscepit, audaciae partes
Roscii sibi poposcerunt, Chrysogonus autem, is qui
plurimum potest, potentia pugnat. De hisce om-
36 nibus rebus me dicere oportere intellego. Quid igitur
est? Non eodem modo de omnibus, ideo quod prima
illa res ad meum officium pertinet, duas autem
reliquas vobis populus Romanus imposuit; ego
crimen oportet diluam, vos et audaciae resistere et
hominum eius modi perniciosam atque intolerandam

effect that it brought ruin and disaster on the whole
body of citizens, on those by whom, because he
desired to save them by means of an amicable
settlement, he was himself slain. In the present 34
case is there not a striking resemblance to the words
and deeds of Fimbria? You accuse Sextus Roscius.
Why? Because he has escaped from your hands,
because he has not allowed himself to be killed.
The crime of Fimbria, because it was committed in
the case of Scaevola, seems more infamous; is the
crime against Roscius just because it is committed by
Chrysogonus, to be endured? For, by the immortal
gods, what is there in this case that needs a defence?
What point requires the talent of a lawyer or greatly
needs the eloquence of an orator? Let us unfold the
whole case, gentlemen, and examine it after it has
been put before your eyes; by this means you will
most readily understand on what the whole issue
depends, what ought to be the subject of my speech,
and what course it befits you to follow.

XIII. As far as I can judge, there are three 35
obstacles by which Sextus Roscius is faced to-day:
the accusation brought by his adversaries, their
audacity, and their power. The accuser Erucius
has undertaken the fabrication of the charge; the
Roscii have claimed the rôle of the audacious villains;
but Chrysogonus, who has the greatest influence,
uses the weapon of power against us. I feel that it
is my duty to discuss each of these three points.
How then am I to proceed? I must not discuss them 36
all in the same way, for the reason that the first point
concerns my own duty, whereas the Roman people
has assigned the two others to you. I have to refute
the charge; it rests with you to resist audacity, to

potentiam primo quoque tempore extinguere atque opprimere debetis.

37 Occidisse patrem Sex. Roscius arguitur. Scelestum, di immortales, ac nefarium facinus atque eius modi, quo uno maleficio scelera omnia complexa esse videantur! Etenim si, id quod praeclare a sapientibus dicitur, vultu saepe laeditur pietas, quod supplicium satis acre reperietur in eum, qui mortem obtulerit
parenti? pro quo mori ipsum, si res postularet, iura
38 divina atque humana cogebant. In hoc tanto, tam
atroci, tam singulari maleficio, quod ita raro exstitit, ut, si quando auditum sit, portenti ac prodigii simile numeretur, quibus tandem, C. Eruci, argumentis accusatorem censes uti oportere? nonne et audaciam eius, qui in crimen vocetur, singularem ostendere et mores feros immanemque naturam et vitam vitiis flagitiisque omnibus deditam, et denique omnia ad perniciem profligata atque perdita? Quorum tu nihil in Sex. Roscium ne obiciendi quidem causa contulisti.

39 XIV. Patrem occidit Sex. Roscius. Qui homo? adulescentulus corruptus et ab hominibus nequam inductus? Annos natus maior quadraginta. Vetus videlicet sicarius, homo audax et saepe in caede versatus. At hoc ab accusatore ne dici quidem audistis. Luxuries igitur hominem nimirum et aeris alieni magnitudo et indomitae animi cupiditates ad hoc scelus impulerunt. De luxurie purgavit Erucius, cum

[a] That is, reproaching him for something you cannot prove.

smother and extinguish the dangerous and intolerable power of men of this kind at the very first opportunity.

My client is accused of having killed his father—a 37
criminal and impious act, O immortal gods! of such a nature that all kinds of guilt seem to be included in this single evil deed. In fact, if, as is well said by philosophers, filial duty is often violated by a look, what punishment sufficiently severe can be found for one who has brought death upon his father, for whom all laws human and divine bound him to suffer death himself, if circumstances demanded?

In the case of a crime so grave, so atrocious, so un- 38
usual, and one which has been so rarely committed that, whenever it is heard of, it is regarded as a portent and monstrosity, what arguments, I ask you, do you think you ought to employ, Erucius, in your capacity of accuser? Ought you not to show the remarkable audacity of the man who is accused of it, his savage manners and brutal nature, a life given up to every kind of vice and infamy, in short, a character depraved, abandoned, and utterly ruined? You have brought none of these imputations against my client, not even for the sake of throwing them in his teeth.[a]

XIV. Sextus Roscius killed his father. What 39
kind of man is he then? a depraved youth led astray by worthless companions? He is more than forty years old. He is doubtless a veteran assassin, a man of audacity and experienced in committing murder? But you have not heard this even hinted at by the accuser. No doubt, then, it was riotous living, enormous debts, and his unbridled desires that drove him to commit this crime? As for the charge of riotous living, Erucius himself has cleared him from

dixit hunc ne in convivio quidem ullo fere interfuisse. Nihil autem umquam debuit. Cupiditates porro quae possunt esse in eo, qui, ut ipse accusator obiecit, ruri semper habitarit et in agro colendo vixerit? quae vita maxime disiuncta a cupiditate et cum
40 officio coniuncta est. Quae res igitur tantum istum furorem Sex. Roscio obiecit? "Patri," inquit, "non placebat." Patri non placebat? quam ob causam? necesse est enim eam quoque iustam et magnam et perspicuam fuisse. Nam ut illud incredibile est, mortem oblatam esse patri a filio sine plurimis et maximis causis, sic hoc veri simile non est, odio fuisse parenti filium sine causis multis et
41 magnis et necessariis. Rursus igitur eodem revertamur et quaeramus, quae tanta vitia fuerint in unico filio, quare is patri displiceret. At perspicuum est nullum fuisse. Pater igitur amens, qui odisset eum sine causa, quem procrearat? At is quidem fuit omnium constantissimus. Ergo illud iam perspicuum profecto est, si neque amens pater neque perditus filius fuerit, neque odii causam patri neque sceleris filio fuisse.

42 XV. "Nescio," inquit, "quae causa odii fuerit; fuisse odium intellego, quia antea, cum duos filios haberet, illum alterum, qui mortuus est, secum omni tempore volebat esse, hunc in praedia rustica relegarat." Quod Erucio accidebat in mala nugatoriaque accusatione, idem mihi usu venit in causa optima.

that by saying that he hardly ever took part in any festive gathering; as for debts, he never had any; further, as for greed, how could it exist in one who has always lived in the country and occupied himself with the cultivation of his land, with which the accuser himself has reproached him—a kind of life which is entirely removed from the passion of avarice,
but inseparable from duty? What then suggested 40
such an act of madness as that to Sextus Roscius? "His father disliked him," says the accuser. His father disliked him? why? There must have been a valid, strong, and obvious reason, for it is as improbable that a son should be hated by his father without many strong and cogent reasons, as it is incredible that death should be inflicted upon a father by his son unless he had numerous and weighty motives for the
act. To return to our point: let us ask what vices 41
there can have been in an only son sufficiently shocking to make his father dislike him. But it is clear that he had no vices. Was his father mad, then, seeing that he hated, without reason, the son whom he had begotten? On the contrary, he was a man of a most steadfast character. Consequently, it is evident indeed that, if the father was not out of his mind nor his son a profligate, the father had no reason to hate his son, nor the son to murder him.

XV. "I do not know," says the accuser, "what 42
reason there was for this hatred; I only know that it existed, since previously, when he had two sons alive, he wanted the one who is now dead to be always with him, but sent away the accused to his farms in the country." And what happened to Erucius in bringing a malicious and frivolous accusation is exactly my experience in defending an excellent cause.

Ille quo modo crimen commenticium confirmaret, non inveniebat, ego res tam leves qua ratione infirmem
43 ac diluam, reperire non possum. Quid ais, Eruci? tot praedia, tam pulchra, tam fructuosa Sex. Roscius filio suo relegationis ac supplicii gratia colenda ac tuenda tradiderat? Quid? hoc patres familias, qui liberos habent, praesertim homines illius ordinis ex municipiis rusticanis, nonne optatissimum sibi putant esse, filios suos rei familiari maxime servire et in praediis colendis operae plurimum studiique con-
44 sumere? An amandarat hunc sic, ut esset in agro ac tantum modo aleretur ad villam, ut commodis omnibus careret? Quid? si constat hunc non modo colendis praediis praefuisse, sed certis fundis patre vivo frui solitum esse, tamenne haec vita a te rusticana relegatio atque amandatio appellabitur? Vides, Eruci, quantum distet argumentatio tua ab re ipsa atque a veritate. Quod consuetudine patres faciunt, id quasi novum reprehendis; quod benevolentia fit, id odio factum criminaris; quod honoris causa pater filio suo concessit, id eum supplicii causa
45 fecisse dicis. Neque haec tu non intellegis, sed usque eo, quid arguas, non habes, ut non modo tibi contra nos dicendum putes, verum etiam contra rerum naturam contraque consuetudinem hominum contraque opiniones omnium.

XVI. At enim, cum duos filios haberet, alterum a

[a] Others render *commodis* by "comforts of life."
[b] Or, "the natural course of things."

He could find no proofs to support his false charge, I can discover no means of disproving and refuting such trifling allegations. What is that you say, Erucius? 43
Did Sextus Roscius hand over so many fine and productive farms to his son to cultivate and look after merely for the sake of getting him out of the way and punishing him? What? do not the heads of households who have children, especially those of Roscius's class from the country towns, think it most desirable for themselves that their sons should devote themselves as much as possible to the management of the estate and spend a large part of their labour and pains on cultivating the farms? Or did he send him away 44
with the intent that he might remain on the estate and merely have his food given him at the country house while at the same time he was deprived of all advantages?[a] What? if it is established that Roscius not only superintended the cultivation of the farms, but, even during his father's lifetime, was allowed to have the usufruct of certain estates, will you, in spite of this, continue to call his life a banishment to the country to get him out of the way? You see, Erucius, how far your reasoning differs from the facts of the case and the truth. What fathers are in the habit of doing, you find fault with as something novel; what is an act of kindness you denounce as inspired by hatred; what a father has granted his son as a mark of esteem, you assert is intended as a punishment. Not that you do not understand this, but you can 45
find so few arguments, that you think yourself obliged not only to speak against us, but even against the nature of the facts,[b] the custom of mankind, and generally received opinions.

XVI. Well, but, you say, whereas Roscius had two

se non dimittebat, alterum ruri esse patiebatur. Quaeso, Eruci, ut hoc in bonam partem accipias; non enim exprobrandi causa, sed commonendi gratia
46 dicam. Si tibi fortuna non dedit, ut patre certo nascerere, ex quo intellegere posses, qui animus patrius in liberos esset, at natura certe dedit, ut humanitatis non parum haberes; eo accessit studium doctrinae, ut ne a litteris quidem alienus esses. Ecquid tandem tibi videtur, ut ad fabulas veniamus, senex ille Caecilianus minoris facere Eutychum, filium rusticum, quam illum alterum, Chaerestratum? (nam, ut opinor, hoc nomine est) alterum in urbe secum honoris causa habere, alterum rus supplicii
47 causa relegasse? "Quid ad istas ineptias abis?" inquies. Quasi vero mihi difficile sit quamvis multos nominatim proferre, ne longius abeam, vel tribules vel vicinos meos, qui suos liberos, quos plurimi faciunt, agricolas assiduos esse cupiunt. Verum homines notos sumere odiosum est, cum et illud incertum sit, velintne ii sese nominari, et nemo vobis magis notus futurus sit, quam est hic Eutychus, et certe ad rem nihil intersit, utrum hunc ego comicum adulescentem an aliquem ex agro Veiente nominem. Etenim haec conficta arbitror esse a poëtis, ut effictos nostros mores in alienis personis expressamque

[a] An allusion to the bad reputation of Erucius's mother; also a freedman legally had no father: *cf.* Ulpian, *frag.* iv. 2 "qui matre quidem (certa), patre autem incerto nati sunt, spurii appellantur."

[b] Caecilius Statius (died 166 B.C.), a Roman writer of comedy, by some ancient critics considered superior to Plautus. His model was Menander, whom he freely imitated. The play here referred to is Menander's Ὑποβολιμαῖος (*Subditivus*) the supposititious child.

[c] Or "known personally," *i.e.* either to me or to others.

[d] Veii in Etruria, an early rival of Rome, was destroyed

sons, he never sent one of them away, but left the other to live in the country. I beg you, Erucius, to take what I am going to say in good part, for I do not mean to reproach you, but to remind you. If it has 46
not been your lot to be born of a father about whom there is no mistake,[a] from whom you could have learnt what was the feeling of a father towards his children, at least nature has given you no small share of humanity, combined with a taste for learning, so that you are not a stranger to literature. To take an example from the stage, I ask you whether you really think that the old man in the play of Caecilius[b] thinks less of Eutychus, who lives in the country, than of the other, Chaerestratus (I think that was his name); that he keeps the one with him in the city as a token of esteem, while he has sent the other into the country as a punishment. "Why go 47
off into such irrelevancies?" you will say. As if it would be difficult for me—without "going off" very far—to bring forward by name as many as you please of my fellow-tribesmen or neighbours, who desire that their favourite sons should devote themselves to agriculture! But it is a breach of good manners to take as examples men who are well known,[c] since it is uncertain whether they would like their names to be given; besides, none of them is likely to be better known to you than Eutychus, and certainly it makes no difference to the argument, whether I quote the name of this young man in the comedy or of anyone from the territory of Veii.[d] I think, in fact, that these fictions of the poets are intended to give us a representation of our manners in the characters of others

by Camillus in 396 B.C. and its territory occupied by Roman settlers.

48 imaginem nostrae vitae cotidianae videremus. Age nunc, refer animum sis ad veritatem et considera, non modo in Umbria atque in ea vicinitate, sed in his veteribus municipiis quae studia a patribus familias maxime laudentur; iam profecto te intelleges inopia criminum summam laudem Sex. Roscio vitio et culpae dedisse. XVII. Ac non modo hoc patrum voluntate liberi faciunt, sed permultos et ego novi et, nisi me fallit animus, unus quisque vestrum, qui et ipsi incensi sunt studio, quod ad agrum colendum attinet, vitamque hanc rusticam, quam tu probro et crimini putas esse oportere, et honestissimam et suavissimam esse
49 arbitrantur. Quid censes hunc ipsum Sex. Roscium quo studio et qua intellegentia esse in rusticis rebus? Ut ex his propinquis eius, hominibus honestissimis, audio, non tu in isto artificio accusatorio callidior es quam hic in suo. Verum, ut opinor, quoniam ita Chrysogono videtur, qui huic nullum praedium reliquit, et artificium obliviscatur et studium deponat licebit. Quod tametsi miserum et indignum est, feret tamen aequo animo, iudices, si per vos vitam et famam potest obtinere; hoc vero est quod ferri non potest, si et in hanc calamitatem venit propter praediorum bonitatem et multitudinem et, quod ea studiose coluit, id erit ei maxime fraudi, ut parum miseriae sit, quod aliis coluit, non sibi, nisi etiam, quod omnino coluit, crimini fuerit.

50 XVIII. Ne tu, Eruci, accusator esses ridiculus, si

and a vivid picture of our daily life. Come now, carry 48
your mind back, if you please, to realities and consider what pursuits are most esteemed by heads of households, not only in Umbria and the neighbourhood, but in our old municipal towns; and you will assuredly find that, for lack of well-grounded accusations, you have made out what does the highest credit to Roscius to be a crime and a fault.

XVII. And it is not only in obedience to their fathers' wishes that sons devote themselves to agriculture, but I myself, and, unless I am mistaken, each of you also knows many, who of their own accord are inspired by zeal for everything connected with agriculture, and consider this country life, which you think should be made a subject for shame and accusation, to be most honourable and most agreeable. As 49
for this Roscius himself, what do you think of the zeal and knowledge shown by him in rural matters? As I learn from his relatives here, most honourable men, you are not shrewder in your own trade of accuser than he is in his. But I suppose, since it is the good pleasure of Chrysogonus, who has not left him a single farm, if he likes, he will be able to forget his trade and give up his interest in it. Although it is disgraceful and an indignity, he will bear it with equanimity, gentlemen, if your verdict enables him to retain his life and honour; but what is intolerable is, that he has been reduced to this distress owing to the number and excellence of his farms, that the pains he has taken to cultivate them will be specially prejudicial to him, and, as if it were not enough misfortune to have cultivated them for others and not for himself, that he should be accused for having cultivated them at all.

XVIII. In truth, Erucius, you would have made 50

illis temporibus natus esses, cum ab aratro arcessebantur, qui consules fierent. Etenim qui praeesse agro colendo flagitium putes, profecto illum Atilium, quem sua manu spargentem semen, qui missi erant, convenerunt, hominem turpissimum atque inhonestissimum iudicares. At hercule maiores nostri longe aliter et de illo et de ceteris talibus viris existimabant itaque ex minima tenuissimaque re publica maximam et florentissimam nobis reliquerunt, Suos enim agros studiose colebant, non alienos cupide adpetebant; quibus rebus et agris et urbibus et nationibus rem publicam atque hoc imperium et
51 populi Romani nomen auxerunt. Neque ego haec eo profero, quo conferenda sint cum hisce, de quibus nunc quaerimus, sed ut illud intellegatur, cum apud maiores nostros summi viri clarissimique homines. qui omni tempore ad gubernacula rei publicae sedere debebant, tamen in agris quoque colendis aliquantum operae temporisque consumpserint, ignosci oportere ei homini, qui se fateatur esse rusticum, cum ruri assiduus semper vixerit, cum praesertim nihil esset, quod aut patri gratius aut sibi iucundius aut re vera honestius facere posset.

52 Odium igitur acerrimum patris in filium ex hoc, opinor, ostenditur, Eruci, quod hunc ruri esse patiebatur. Numquid est aliud? "Immo vero," inquit, "est; nam istum exheredare in animo habebat."

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[a] Said to refer to C. Atilius Serranus, consul 257 B.C. According to Pliny (*Nat. Hist.* xviii. 20) when a deputation came to offer him the consulship, he was found sowing his land himself, whence his surname. But coins call him Sarranus, whence it has been conjectured that he was called after the town of Sarranum in Umbria.

an absurd accuser if you had been born in the times when men were summoned from the plough to be made consuls. For, seeing that you think it a crime to superintend the cultivation of the land, you would assuredly have considered the well-known Atilius,[a] whom the deputation found sowing his field with his own hand, a most base and dishonourable man. But by heaven! our ancestors had a very different opinion of Atilius and others like him. And it was by acting on such principles that, in place of a very small and poor State, they have left us one that is very great and prosperous. For they cultivated their own lands diligently, they did not covetously desire those of others; and by such conduct they added lands and cities, and nations to the republic, and made this dominion and the name of the Roman people greater.
I do not bring forward these facts in order to make 51
a comparison between them and those which we are now examining; my object is to make it understood that, as in the times of our ancestors men of the highest rank and character, who at any time might be summoned to take the helm of the State, nevertheless spent very much time and trouble on the cultivation of their lands, so a man ought to be excused if he confesses himself a rustic, since he has always lived in and clung to the country, especially since there was nothing he could do which would be more agreeable to his father, more pleasant to himself, or really more honourable.

So then, I suppose, Erucius, this violent hatred of 52
the father against the son is shown by his allowing him to remain in the country! Is there anything else? "Certainly there is," says he; "for he intended to disinherit him." I am glad to hear that;

Audio; nunc dicis aliquid, quod ad rem pertineat; nam illa, opinor, tu quoque concedis levia esse atque inepta: "Convivia cum patre non inibat." Quippe, qui ne in oppidum quidem nisi perraro veniret. "Domum suam istum non fere quisquam vocabat." Nec mirum, qui neque in urbe viveret neque revocaturus esset. XIX. Verum haec tu quoque intellegis esse nugatoria; illud, quod coepimus, videamus, quo certius argumentum odii reperiri nullo modo
53 potest. "Exheredare pater filium cogitabat." Mitto quaerere, qua de causa; quaero, qui scias; tametsi te dicere atque enumerare causas omnes oportebat, et id erat certi accusatoris officium, qui tanti sceleris argueret, explicare omnia vitia ac peccata filii, quibus incensus parens potuerit animum inducere, ut naturam ipsam vinceret, ut amorem illum penitus insitum eiceret ex animo, ut denique patrem esse sese oblivisceretur; quae sine magnis huiusce peccatis accidere potuisse non arbitror.
54 Verum concedo tibi, ut ea praetereas, quae cum taces, nulla esse concedis; illud quidem, voluisse exheredare, certe tu planum facere debes. Quid ergo adfers, quare id factum putemus? Vere nihil potes dicere; finge aliquid saltem commode, ut ne plane videaris id facere, quod aperte facis, huius miseri fortunis et horum virorum talium dignitati illudere.

what you say now may have something to do with the case, for I think that even you admit the following arguments to be trifling and absurd: "He never went to any entertainments with his father;" of course not, seeing that he rarely came into town. "People very seldom asked him to their house;" there is nothing surprising in that, seeing that he did not live in the city, and could not return their invitation.

XIX. But you yourself are aware that such arguments are worthless. Now let us consider what we began to speak of, which is the strongest proof of
hatred that can possibly be found: "the father in- 53
tended to disinherit the son." I do not ask for what reason, I ask how you know it. Certainly you ought to have stated and enumerated all the reasons, and it would have been the duty of a conscientious accuser, whose object it was to convict anyone of such a crime, to set forth all the vices and transgressions of the son, by which the father could have been so enraged as to bring himself to overcome his natural feelings, to drive out of his mind that love so deeply rooted in it, and, lastly, to forget that he was a father, which it seems to me could never have happened without the gravest transgressions on the part of my client.

However, I give you permission to pass over these 54
faults, which by your silence you admit are non-existent; as for your affirmation that he intended to disinherit his son, you certainly ought to prove it. What then can you bring forward to convince us that such was his intention? You can say nothing that agrees with the truth, but at least invent something plausible that you may not be clearly convicted of doing what you are openly doing—of insulting the misfortunes of Roscius and the dignity of judges so

Exheredare filium voluit. Quam ob causam? "Nescio." Exheredavitne? "Non." Quis prohibuit? "Cogitabat." Cogitabat? cui dixit? "Nemini." Quid est aliud iudicio ac legibus ac maiestate vestra abuti ad quaestum atque ad libidinem, nisi hoc modo accusare atque id obicere, quod planum facere non
55 modo non possis, verum ne coneris quidem? Nemo nostrum est, Eruci, quin sciat tibi inimicitias cum Sex. Roscio nullas esse; vident omnes, qua de causa huic inimicus venias; sciunt huiusce pecunia te adductum esse. Quid ergo est? Ita tamen quaestus te cupidum esse oportebat, ut horum existimationem et legem Remmiam putares aliquid valere oportere.

XX. Accusatores multos esse in civitate utile est, ut metu contineatur audacia; verum tamen hoc ita est utile, ut ne plane illudamur ab accusatoribus. Innocens est quispiam, verum tamen, quamquam abest a culpa, suspicione tamen non caret; tametsi miserum est, tamen ei, qui hunc accuset, possim aliquo modo ignoscere. Cum enim aliquid habeat, quod possit criminose ac suspiciose dicere, aperte
56 ludificari et calumniari sciens non videatur. Quare facile omnes patimur esse quam plurimos accusatores,

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[a] Cicero pretends to dismiss the subject: "You wanted money. Why say more?" Then after a pause he corrects himself and reminds Erucius that the jury and the law might have something to say.

[b] It is not known when this law was passed or by whom. It dealt with the offence of *calumnia*, bringing a charge against anyone, while knowing it to be false. If an accuser was proved guilty of this, the law established certain penalties, amongst them being branded on the forehead with the letter K (the initial letter of *calumnia* when correctly spelt, as also of *Kalendae*: see § 57). This rendered him

eminent as these. The father intended to disinherit the son: for what reason? "I do not know." Did he disinherit him? "No." Who prevented him? "He was thinking of it." Thinking of it? to whom did he say that? "To nobody." What, I ask, is an accusation of this kind and such imputations as you are not only unable to prove but do not even attempt to prove—what are they but an abuse of the court, the laws, and your dignity, gentlemen, in order to secure gain and gratify extravagant desires? There 55
is not one of us, Erucius, who does not know that no personal enmity exists between you and Roscius; everybody is aware why you appear in court as his enemy; everybody knows that you have been prevailed upon by my client's money. So then what is there to say?[a] And yet, however eager for gain you were, you ought to have thought that the opinion of the jury about you and the Remmian law[b] must carry some weight.

XX. It is a useful thing that there should be a number of accusers in the State, so that audacity may be held in check by fear, but only on condition that they do not openly play the fool with us. So-and-so is innocent; but although he is free from guilt, he is not free from suspicion. Although it is a misfortune for him, still, I could to a certain extent pardon one who accuses him. For since the accuser is able to state something to incriminate the accused and create suspicion against him, he may not appear to be openly fooling us or knowingly slandering us. This 56
is the reason why we are all ready to allow that there should be as many accusers as possible, because an

subject to *infamia* (loss of political rights) and he could not again come forward as an accuser.

quod innocens, si accusatus sit, absolvi potest, nocens, nisi accusatus fuerit, condemnari non potest; utilius est autem absolvi innocentem quam nocentem causam non dicere. Anseribus cibaria publice locantur, et canes aluntur in Capitolio, ut significent, si fures venerint. At fures internoscere non possunt, significant tamen, si qui noctu in Capitolium venerunt, et, quia id est suspiciosum, tametsi bestiae sunt, tamen in eam partem potius peccant, quae est cautior. Quodsi luce quoque canes latrent, cum deos salutatum aliqui venerint, opinor, iis crura suffringantur, quod acres sint etiam tum, cum suspicio nulla sit.
57 Simillima est accusatorum ratio. Alii vestrum anseres sunt, qui tantum modo clamant, nocere non possunt, alii canes, qui et latrare et mordere possunt. Cibaria vobis praeberi videmus; vos autem maxime debetis in eos impetum facere, qui merentur. Hoc populo gratissimum est. Deinde, si voletis, etiam tum, cum veri simile erit aliquem commisisse, in suspicione latratote; id quoque concedi potest. Sin autem sic agetis, ut arguatis aliquem patrem occidisse neque dicere possitis, aut quare aut quo modo, ac tantum modo sine suspicione latrabitis, crura quidem vobis nemo suffringet, sed, si ego hos bene novi, litteram illam, cui vos usque eo inimici estis, ut etiam Kal. omnes oderitis, ita vehementer ad caput

[a] The sacred geese were fed at the public expense, because their cackling saved the Capitol from capture by the Gauls (390 B.C.), while the dogs had failed to give warning. The comparison between the *accusatores* and the geese is not accurate, because the sacred geese were not supposed to keep watch, and prosecutors received no salary from the State.

[b] The fees received by people like Erucius from private persons, in this case the two Roscii.

innocent man, if he is accused, can be acquitted, and one who is guilty, unless he is accused, cannot be condemned; but it is more serviceable that an innocent man should be acquitted than that a guilty man should not be brought to trial. The food for the geese of the Capitol [a] is contracted for at the public expense, and dogs are kept there, to give the alarm in case thieves should break in. Certainly they cannot distinguish thieves from others, yet they give the alarm if any persons enter the Capitol by night, because this looks suspicious, and although they are merely animals, if they make a mistake, it is rather on the side of caution. But if the dogs should bark by daylight as well, when people come to worship the gods, I imagine they would have their legs broken, for being on the alert even at a time when there is no room for suspicion.
It is just the same in the case of the accusers. Some 57
of you are geese, who only cackle but cannot do any harm, others are dogs, who can both bark and bite. We take care that food is provided for you,[b] but you ought especially to attack those who deserve it; this is most agreeable to the people. Next, when there is a probability that someone has committed a crime, if you have any suspicions, you may bark, if you like; that also is permissible. But if you act in such a manner as to endeavour to prove that a son has murdered his father, without being able to say why or how, if you only bark when there is no cause for suspicion, certainly your legs will not be broken, but, if I know these gentlemen well, they will brand your forehead with that letter,[c] which is so odious to you accusers that you even hate all the Kalends, so deeply

[c] See § 55. The interest on debts had to be paid on the Kalends (first day of the month).

adfigent, ut postea neminem alium nisi fortunas vestras accusare possitis.

58 XXI. Quid mihi ad defendendum dedisti, bone accusator? quid hisce autem ad suspicandum? "Ne exheredaretur, veritus est." Audio, sed qua de causa vereri debuerit, nemo dicit. "Habebat pater in animo." Planum fac. Nihil est; non, quicum deliberarit, quem certiorem fecerit, unde istud vobis suspicari in mentem venerit. Cum hoc modo accusas, Eruci, nonne hoc palam dicis: "Ego quid acceperim, scio, quid dicam, nescio; unum illud spectavi, quod Chrysogonus aiebat, neminem isti patronum futurum; de bonorum emptione deque ea societate neminem esse qui verbum facere auderet hoc tempore"? Haec te opinio falsa in istam fraudem impulit; non mehercules verbum fecisses, si tibi quemquam responsurum putasses.

59 Operae pretium erat, si animadvertistis, iudices, neglegentiam eius in accusando considerare. Credo, cum vidisset, qui homines in hisce subselliis sederent, quaesisse, num ille aut ille defensurus esset; de me ne suspicatum quidem esse, quod antea causam publicam nullam dixerim. Posteaquam invenit neminem eorum, qui possunt et solent, ita neglegens esse coepit, ut, cum in mentem veniret ei, resideret, deinde spatiaretur, non numquam etiam puerum vocaret, credo, cui cenam imperaret, prorsus ut vestro

[a] Orators indulged in lively gesticulation and movements —flinging their arms about, stamping their feet, striding up and down; *cf.* § 89 "quo te modo iactares!"

that in future you will have no one to accuse but your own ill-luck.

XXI. What then have you given me to refute, my 58 worthy accuser? What grounds for suspicion have you given these gentlemen? "He was afraid of being disinherited." I hear you say so, but no one gives any reason why he should have been afraid of this. "His father intended to disinherit him." Prove it. There is no proof; you neither give the name of anyone whom he consulted or informed of his intention, nor the reasons which caused such a suspicion to arise in your mind. When you bring an accusation in this manner, Erucius, do you not openly declare: "I know what I have received, I do not know what I am to say; my only consideration has been the assertion of Chrysogonus that no one would undertake the defence of this man, that no one in times like these would dare to utter a word about the purchase of the goods or the partnership"? It was this delusive hope that led you into this self-deception; by heaven! you would not have said a word, if you had thought that anyone would reply to you.

It would have been worth your while, gentlemen, 59 if you noticed it, to consider this man's carelessness in making his accusation. When he saw who were the men sitting on these benches, I cannot help thinking that he asked whether so and so was likely to undertake the defence; that he never even thought of me, because I had never pleaded in a criminal case before. Finding that no one of ability or experience would defend, he began to show such indifference that, when it occurred to him, he sat down, then he walked about,[a] sometimes called for his slave (I suppose to order supper); in fact, he treated you who sit in

consessu et hoc conventu pro summa solitudine
60 abuteretur. XXII. Peroravit aliquando, adsedit; surrexi ego. Respirare visus est, quod non alius potius diceret. Coepi dicere. Usque eo animadverti, iudices, eum iocari atque alias res agere, antequam Chrysogonum nominavi; quem simul atque attigi, statim homo se erexit, mirari visus est. Intellexi, quid eum pupugisset. Iterum ac tertio nominavi. Postea homines cursare ultro et citro non destiterunt, credo, qui Chrysogono nuntiarent esse aliquem in civitate, qui contra voluntatem eius dicere auderet; aliter causam agi, atque ille existimaret, aperiri bonorum emptionem, vexari pessime societatem, gratiam potentiamque eius neglegi, iudices diligenter attendere, populo rem indignam videri.
61 Quae quoniam te fefellerunt, Eruci, quoniamque vides versa esse omnia, causam pro Sex. Roscio, si non commode, at libere dici, quem dedi putabas, defendi intellegis, quos tradituros sperabas, vides iudicare, restitue nobis aliquando veterem tuam illam calliditatem atque prudentiam, confitere huc ea spe venisse, quod putares hic latrocinium, non iudicium futurum.

De parricidio causa dicitur; ratio ab accusatore reddita non est, quam ob causam patrem filius occiderit.

[a] Or, "expecting to find robbers, not jurymen."

judgement and the general public with no more respect than if he had been absolutely alone.

XXII. At last he concluded and sat down; *I* got 60
up. He seemed to breathe again, because no one rather than myself was going to speak. I began to speak. I observed, gentlemen, that he was joking and paid no attention, until I mentioned the name of Chrysogonus; as soon as I referred to him my man immediately jumped up; he seemed to be astonished. I understood what had stung him. I mentioned Chrysogonus a second and a third time. After that, men continued running hastily hither and thither, I suppose to inform Chrysogonus that there was someone in Rome who was bold enough to speak contrary to his will, that the case was being carried on differently from what he expected, that the purchase of the goods was revealed, that the partnership was being severely criticized and his influence and power disregarded, that the jurymen were attending carefully, that the people thought the matter scandalous.
Since you have been mistaken in these matters; 61
since you see that everything is changed, that the cause of Sextus Roscius is being pleaded, if not adequately, at least with freedom; since you see that he whom you thought abandoned is being defended, that those who you thought would give him up are acting as judges, show us again, at last, your old shrewdness and sagacity, confess that you have come here hopefully, because you imagined that you would find here the opportunity for robbery rather than the home of justice.[a]

The trial deals with a case of parricide; the accuser has given no account of the motive which induced the
son to kill his father. In the case of the most trifling 62

62 Quod in minimis noxiis et in his levioribus peccatis, quae magis crebra et iam prope cotidiana sunt, vel maxime et primum quaeritur, quae causa maleficii fuerit, id Erucius in parricidio quaeri non putat oportere; in quo scelere, iudices, etiam cum multae causae convenisse unum in locum atque inter se congruere videntur, tamen non temere creditur, neque levi coniectura res penditur, neque testis incertus auditur, neque accusatoris ingenio res iudicatur. Cum multa antea commissa maleficia, cum vita hominis perditissima, tum singularis audacia ostendatur necesse est, neque audacia solum, sed summus furor atque amentia. Haec cum sint omnia, tamen exstent oportet expressa sceleris vestigia, ubi, qua ratione, per quos, quo tempore maleficium sit admissum. Quae nisi multa et manifesta sunt, profecto res tam scelesta, tam atrox, tam nefaria credi
63 non potest. Magna est enim vis humanitatis; multum valet communio sanguinis; reclamitat istius modi suspicionibus ipsa natura; portentum atque monstrum certissimum est esse aliquem humana specie et figura, qui tantum immanitate bestias vicerit, ut, propter quos hanc suavissimam lucem aspexerit, eos indignissime luce privarit, cum etiam feras inter sese partus atque educatio et natura ipsa conciliet.

64 XXIII. Non ita multis ante annis aiunt T. Caelium quendam, Tarracinensem, hominem non obscurum, cum cenatus cubitum in idem conclave

[a] Halm compares *De finibus*, iii. 62 "etiam in bestiis vis naturae perspici potest: quarum in fetu et in educatione laborem cum cernimus, naturae ipsius vocem videmur audire."

[b] Tarracina (mod. *Terracina*), formerly called Anxur, was about sixty miles south-east of Rome, on the Via Appia. The story is repeated in Valerius Maximus (viii. 1. 13).

offences and less flagrant misdemeanours, such as we know are more frequent and now of almost daily occurrence, the object of the first and fullest inquiry is to find out the motive of the offence; but in a case of parricide Erucius does not think such an inquiry necessary. In the case of such a crime, gentlemen, even when many motives appear to coincide and to be consistent with each other, it is not believed without due consideration, the matter is not decided by idle conjectures, no untrustworthy witness is listened to, nor is the verdict determined by the accuser's ability. In addition to the commission of many crimes and a most abandoned life, it must be proved that the accused has shown extraordinary audacity, and not only audacity, but the height of frenzy and madness. But even if all this be proved, unmistakable traces of the crime must be forthcoming: where, how, by whose means, the time at which it was committed. And unless these proofs are many and evident, assuredly an act so criminal, so atrocious, and
so wicked cannot be believed. For the power of 63
human feeling is great; the ties of blood are very strong; nature herself cries out against such suspicions; it is undoubtedly an unnatural and monstrous phenomenon, that a being of human form and figure should exist so far surpassing the beasts in savagery as to have most shamefully defrauded of the light of day those to whom he is indebted for that sweetest of all sights, whereas even the beasts are united among themselves by the ties of birth, rearing, and of nature herself.[a]

XXIII. Not many years ago, it is said, a certain 64
Titus Caelius, a well-known citizen of Tarracina,[b] went to bed after supper in the same room as his two grown-

cum duobus adulescentibus filiis isset, inventum esse mane iugulatum. Cum neque servus quisquam reperiretur neque liber, ad quem ea suspicio pertineret, id aetatis autem duo filii propter cubantes ne sensisse quidem se dicerent, nomina filiorum de parricidio delata sunt. Quid poterat tam esse suspiciosum? neutrumne sensisse? ausum autem esse quemquam se in id conclave committere eo potissimum tempore, cum ibidem essent duo adulescentes
65 filii, qui et sentire et defendere facile possent? Erat porro nemo, in quem ea suspicio conveniret. Tamen, cum planum iudicibus esset factum aperto ostio dormientes eos repertos esse, iudicio absoluti adulescentes et suspicione omni liberati sunt. Nemo enim putabat quemquam esse, qui, cum omnia divina atque humana iura scelere nefario polluisset, somnum statim capere potuisset, propterea quod, qui tantum facinus commiserunt, non modo sine cura quiescere, sed ne spirare quidem sine metu possunt.

66 XXIV. Videtisne, quos nobis poëtae tradiderunt patris ulciscendi causa supplicium de matre sumpsisse, cum praesertim deorum immortalium iussis atque oraculis id fecisse dicantur, tamen ut eos agitent Furiae neque consistere umquam patiantur, quod ne pii quidem sine scelere esse potuerunt? Sic se res habet, iudices: magnam vim, magnam necessitatem, magnam possidet religionem paternus maternusque sanguis; ex quo si qua macula concepta est, non modo elui non potest, verum usque eo permanat

[a] Or, "sleeping with the door open." The Latin may bear either meaning; it is merely a question which rendering appears more suitable.

[b] Orestes and Alcmaeon.

[c] Others render *necessitas* "a strong tie of kinship."

up sons, and was found dead in the morning with his throat cut. As no slave nor free man could be found, on whom suspicion might have fallen, while the two grown-up sons who slept near their father declared that they had not noticed anything, they were indicted for parricide. What could be so suspicious? that neither of them had observed anything? that someone had dared to venture into that room, at the very time when the two sons were there, who could easily have seen the crime and offered resistance?
Moreover, there was no one who might have been 65
reasonably suspected. However, the judges having been convinced that the young men had been found asleep when the door was opened,[a] they were acquitted and cleared of all suspicion. In fact, there was no one who thought that a man could have existed capable of going to sleep immediately after he had violated all laws human and divine by an impious crime, because those who have committed such a deed are not only unable to rest peacefully, but cannot even breathe without fear.

XXIV. Do you not know of those sons [b] who, ac- 66
cording to the traditions handed down to us by the poets, slew their mother to avenge their father? Even though they are said to have acted in obedience to the commands and oracles of the immortal gods, yet you read how the Furies harass them and never allow them to rest, because they could not even fulfil their duty to their father without committing a crime. For the truth is this, gentlemen: the blood of a father and mother has great power, restraining force,[c] and sanctity; a single drop of this blood produces a stain, which not only cannot be washed out,[d]

[d] *Macbeth*, v. 1. 36 "Out, damnèd spot."

ad animum, ut summus furor atque amentia con-
67 sequatur. Nolite enim putare, quem ad modum in fabulis saepenumero videtis, eos, qui aliquid impie scelerateque commiserunt, agitari et perterreri Furiarum taedis ardentibus. Sua quemque fraus et suus terror maxime vexat, suum quemque scelus agitat amentiaque adficit, suae malae cogitationes conscientiaeque animi terrent; hae sunt impiis assiduae domesticaeque Furiae, quae dies noctesque parentium poenas a consceleratissimis filiis repetant.
68 Haec magnitudo maleficii facit, ut, nisi paene manifestum parricidium proferatur, credibile non sit, nisi turpis adulescentia, nisi omnibus flagitiis vita inquinata, nisi sumptus effusi cum probro atque dedecore, nisi prorupta[1] audacia, nisi tanta temeritas, ut non procul abhorreat ab insania. Accedat huc oportet odium parentis, animadversionis paternae metus, amici improbi, servi conscii, tempus idoneum, locus opportune captus ad eam rem; paene dicam, respersas manus sanguine paterno iudices videant oportet, si tantum facinus, tam immane, tam acerbum
69 credituri sunt. Quare hoc quo minus est credibile, nisi ostenditur, eo magis est, si convincitur, vindicandum.

XXV. Itaque cum multis ex rebus intellegi potest maiores nostros non modo armis plus quam ceteras nationes, verum etiam consilio sapientiaque potuisse,

[1] *Another reading is* praerupta "*hasty*," "*headlong*."

[a] *Acerbum.* Others render "unnatural," from the idea of sourness, unripeness (not ripe as it should be).

but penetrates even to the heart, to be succeeded by
the height of frenzy and madness. For you must not 67
think, as you often see in plays, that those who have committed any impious and criminal act are harassed and terrified by the blazing torches of the Furies. It is their own evil deed, their own terror that torments them more than anything else; each of them is harassed and driven to madness by his own crime; his own evil thoughts and the stings of conscience terrify him. These are the Furies which never leave the wicked, which dwell in their hearts, which, night and day, exact expiation for parents from sons stained with guilt.

It is owing to the enormity of the crime that, unless 68
the act of parricide is beyond a doubt, it appears incredible; unless a man's youth has been disgraceful, his life polluted with shameful acts of every kind, his extravagance lavish accompanied by shame and disgrace, his audacity unrestrained, his rashness not far removed from madness. To this should be added hatred on his father's part, the fear of paternal reproof, bad friends, slaves as accomplices, a favourable opportunity, a suitably chosen place for the purpose. I would almost say that the jury must see the son's hands sprinkled with the father's blood, if they are to believe a crime so great, so atrocious, and so cruel.[a]

This is the reason why, the less credible parricide 69
is, unless it is clearly demonstrated, it should be punished all the more severely, if it is proved beyond a doubt.

XXV. And so, while from many other things we can understand that our ancestors have surpassed other nations, not only in arms, but also in wisdom and prudence, this is especially shown by the fact that

tum ex hac re vel maxime, quod in impios singulare supplicium invenerunt. Qua in re quantum prudentia praestiterint iis, qui apud ceteros sapientissimi
70 fuisse dicuntur, considerate. Prudentissima civitas Atheniensium, dum ea rerum potita est, fuisse traditur; eius porro civitatis sapientissimum Solonem dicunt fuisse, eum qui leges, quibus hodie quoque utuntur, scripsit. Is cum interrogaretur, cur nullum supplicium constituisset in eum, qui parentem necasset, respondit se id neminem facturum putasse. Sapienter fecisse dicitur, cum de eo nihil sanxerit, quod antea commissum non erat, ne non tam prohibere quam admonere videretur. Quanto nostri maiores sapientius! qui cum intellegerent nihil esse tam sanctum, quod non aliquando violaret audacia, supplicium in parricidas singulare excogitaverunt, ut, quos natura ipsa retinere in officio non potuisset, magnitudine poenae a maleficio summoverentur. Insui voluerunt in culleum vivos atque ita in flumen deici.

71 XXVI. O singularem sapientiam, iudices! Nonne videntur hunc hominem ex rerum natura sustulisse et eripuisse, cui repente caelum, solem, aquam terramque ademerint, ut, qui eum necasset, unde ipse natus esset, careret iis rebus omnibus, ex quibus omnia nata esse dicuntur? Noluerunt feris corpus obicere, ne bestiis quoque, quae tantum scelus attigissent, immanioribus uteremur; non sic nudos in

they devised a remarkable punishment for the undutiful. In this matter, consider how in sagacity they excelled those who are reputed to have been the
wisest men of all other nations. According to tradi- 70
tion, Athens, while she possessed the hegemony of Greece, was the most sagacious of all the states; moreover, the wisest of her citizens is said to have been Solon, the man who drew up the laws which are still in force among them at the present day. When he was asked why he had not fixed a punishment for a man who had killed his father, he answered that he thought no one would be guilty of such a crime. He is said to have acted wisely in not appointing any penalty for a crime which until then had never been committed, for fear he might appear to suggest rather than prevent it. How much wiser were our ancestors! Aware that nothing was so sacred that it might not some day be violated by an act of audacity, they thought out a remarkable punishment for parricides, with the object of deterring from crime, by the greatness of the punishment, those whom nature alone had been unable to keep loyal to duty: they ordered that they should be sewn alive into a sack, and then thrown into a river.

XXVI. A remarkable instance of wisdom, gentle- 71
men! Do they not seem to have removed and torn such a man out of the whole scheme of nature, when they suddenly deprived him of the sky, the sun, earth, and water, so that one who had killed him to whom he owed his birth might be without all those elements to which it is said that all existing things owe their birth? They did not want to throw the body to wild beasts, lest beasts too, that had touched anything so monstrous, should be rendered more

flumen deicere, ne, cum delati essent in mare, ipsum polluerent, quo cetera, quae violata sunt, expiari putantur; denique nihil tam vile neque tam vulgare
72 est, cuius partem ullam reliquerint. Etenim quid tam est commune quam spiritus vivis, terra mortuis, mare fluctuantibus, litus eiectis? Ita vivunt, dum possunt, ut ducere animam de caelo non queant, ita moriuntur, ut eorum ossa terra non tangat, ita iactantur fluctibus, ut numquam abluantur, ita postremo eiciuntur, ut ne ad saxa quidem mortui conquiescant. Tanti maleficii crimen, cui maleficio tam insigne supplicium est constitutum, probare te, Eruci, censes posse talibus viris, si ne causam quidem maleficii protuleris? Si hunc apud bonorum emptores ipsos accusares eique iudicio Chrysogonus praeesset, tamen
73 diligentius paratiusque venisses. Utrum, quid agatur, non vides, an apud quos agatur? Agitur de parricidio, quod sine multis causis suscipi non potest; apud homines autem prudentissimos agitur, qui intellegunt neminem ne minimum quidem maleficium sine causa admittere.

XXVII. Esto, causam proferre non potes. Tametsi statim vicisse debeo, tamen de meo iure decedam et tibi, quod in alia causa non concederem, in hac con-

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[a] Washing in running or sea-water was supposed to purify a person from blood-guiltiness.

savage towards us; they did not want to throw such men, thus naked, into a river, lest, carried down into the sea, they might pollute that very element, by which all that is polluted is supposed to be cleansed[a]; in a word, there is nothing so common or worthless that they left them any share in it. For 72
what is so common as breath to the living, earth to the dead, the sea to those tossed by the waves, the shore to those cast up by the sea? They live, while life lasts, without being able to draw breath from heaven; they die without earth coming in contact with their bones; they are tossed by the waves without ever being cleansed by washing; lastly, they are cast ashore without being able, after death, to find rest even on the rocks.

It is of so great a crime that you accuse Roscius, a crime for which so remarkable a punishment has been imposed; do you think, Erucius, that you can prove it to men such as these, if you cannot even bring forward a reason for the crime? If you were accusing him before the purchasers of his property themselves, and Chrysogonus were presiding at the trial, you should nevertheless have come more carefully prepared. Do you not see what is the nature of the case, 73
or before whom it is being pleaded? It is a question of parricide, which no one attempts to commit without many motives; it is pleaded before men of the greatest shrewdness, who know that no one commits even the most trifling misdemeanour without a motive.

XXVII. Very well; you cannot bring forward any motive. Although it ought to be considered at once that I have won my case, I will not insist upon my right, and will make a concession to you in this case,

cedam fretus huius innocentia. Non quaero abs te, quare patrem Sex. Roscius occiderit, quaero, quo modo occiderit. Ita quaero abs te, C. Eruci: quo modo, et sic tecum agam, ut meo loco vel respondendi vel interpellandi tibi potestatem faciam vel etiam,
74 si quid voles, interrogandi. Quo modo occidit? ipse percussit an aliis occidendum dedit? Si ipsum arguis, Romae non fuit; si per alios fecisse dicis, quaero, servosne an liberos? Si liberos,[1] quos homines? indidemne Ameria an hosce ex urbe sicarios? Si Ameria, qui sunt ii? cur non nominantur? si Roma, unde eos noverat Roscius, qui Romam multis annis non venit neque umquam plus triduo fuit? ubi eos convenit? qui collocutus est? quo modo persuasit? Pretium dedit; cui dedit? per quem dedit? unde aut quantum dedit? Nonne his vestigiis ad caput maleficii perveniri solet? Et simul tibi in mentem veniat facito, quem ad modum vitam huiusce depinxeris; hunc hominem ferum atque agrestem fuisse, numquam cum homine quoquam collocutum
75 esse, numquam in oppido constitisse. Qua in re praetereo illud, quod mihi maximo argumento ad huius innocentiam poterat esse, in rusticis moribus, in victu arido, in hac horrida incultaque vita istius modi maleficia gigni non solere. Ut non omnem frugem neque arborem in omni agro reperire possis,

[1] si liberos *inserted by Madvig*: si per liberos *Halm.*

[a] It was usual to leave the *altercatio* (the interposition of questions to upset an opponent, a kind of cross-examination) until counsel had finished his speech, but Cicero is so confident of winning his case that he expresses his readiness to let it take place during the time allowed for his own speech.

which I would not make in any other, so convinced am I of my client's innocence. I do not ask you to say why Sextus Roscius killed his father, I ask you how he killed him. Yes, I ask you how, O Gaius Erucius, and I will so deal with you that, although it is my time for speaking,[a] I will give you full permission to answer, to interrupt, or, even if you desire it, to ask me questions. How did he kill him? Did he strike 74
the blow himself, or entrust the task to others? If you maintain that he did it himself, I answer that he was not in Rome; if you say that he did it by the hands of others, I ask you, who were they? Slaves or free men? If free men, who are they? from the same place Ameria, or some of these assassins from Rome? If from Ameria, who are they? why are their names not given? if from Rome, how did Roscius, who for several years did not come to Rome and never stayed there more than three days, make their acquaintance? Where did he meet them? how did he get an interview with them? how did he persuade them? He gave them a bribe. To whom, and through whom, did he give it? where did the money come from, and how much was it? Is it not by following up all such traces that the starting-point of the crime is usually reached? And at the same time do not forget how you described the life of my client: you said that he was a boor and a savage, that he never talked to anyone, that he had never stayed in the town of Ameria. In speaking of 75
this, I pass over what might have been a very strong argument in favour of his innocence—that rustic manners, frugal living, a rough and uncivilized life are not generally the birthplace of such crimes. As you could not find every kind of crop or tree on every

sic non omne facinus in omni vita nascitur. In urbe luxuries creatur, ex luxurie existat avaritia necesse est, ex avaritia erumpat audacia, inde omnia scelera ac maleficia gignuntur; vita autem haec rustica, quam tu agrestem vocas, parsimoniae, diligentiae, iustitiae magistra est.

76 XXVIII. Verum haec missa facio; illud quaero, is homo, qui, ut tute dicis, numquam inter homines fuerit, per quos homines hoc tantum facinus, tam occultum, absens praesertim, conficere potuerit. Multa sunt falsa, iudices, quae tamen argui suspiciose possunt; in his rebus si suspicio reperta erit, culpam inesse concedam. Romae Sex. Roscius occiditur, cum in agro Amerino esset filius. Litteras, credo, misit alicui sicario, qui Romae noverat neminem. Arcessivit aliquem. *Quem*[1] aut quando? Nuntium misit. Quem aut ad quem? Pretio, gratia, spe, promissis induxit aliquem. Nihil horum ne confingi quidem potest; et tamen causa de parricidio dicitur.

77 Reliquum est, ut per servos id admiserit. O, di immortales, rem miseram et calamitosam, quod in tali crimine, quod innocentibus saluti solet esse, ut servos in quaestionem polliceantur, id Sex. Roscio facere non licet! Vos, qui hunc accusatis, omnes eius servos habetis; unus puer victus cotidiani administer ex tanta familia Sex. Roscio relictus non est.

[1] quem *Priscianus*, aliquem *MSS.*

soil, so every kind of life does not produce every evil deed. The city creates luxury, from which avarice inevitably springs, while from avarice audacity breaks forth, the source of all crimes and misdeeds. On the other hand, this country life, which you call boorish, teaches thrift, carefulness, and justice.

XXVIII. But I leave these reflections aside. I put 76 this question: this man, who, as you yourself say, never mixed among men, by whose help was he able to perpetrate so mysterious a crime, and that too in his absence? An accusation is often false, gentlemen, but yet based upon facts that afford ground for suspicion; in reference to these, if anything suspicious is found, I will admit that there is guilt. Sextus Roscius is killed at Rome, at the time when his son was in the territory of Ameria. I suppose he, who knew nobody in Rome, sent a letter to some assassin there. "He sent for someone." Whom? when? "He sent a messenger." Whom or to whom? "He persuaded someone by a bribe, by his influence, by promises and the expectations he raised." None of these alternatives can even be fabricated, and yet it is a charge of parricide that is being pleaded.

There remains the alternative that he committed 77 the crime by the agency of slaves. O immortal gods, what a misfortune! What a calamity! That which, as a rule, in an accusation of such a kind, proves the salvation of an innocent man—the offer to put his slaves on the rack—is not permitted to Sextus Roscius! You, the accusers of my client, have in your possession all his slaves; out of so numerous a household, not even a single boy has been left to attend to his

Te nunc appello, P. Scipio, te, *M.* Metelle; vobis advocatis, vobis agentibus aliquotiens duos servos paternos in quaestionem ab adversariis Sex. Roscius postulavit; meministisne T. Roscium recusare? Quid? ii servi ubi sunt? Chrysogonum, iudices, sectantur; apud eum sunt in honore et in pretio. Etiam nunc, ut ex iis quaeratur, ego postulo, hic orat
78 atque obsecrat. Quid facitis? cur recusatis? Dubitate etiam nunc, iudices, si potestis, a quo sit Sex. Roscius occisus, ab eone, qui propter illius mortem in egestate et insidiis versatur, cui ne quaerendi quidem de morte patris potestas permittitur, an ab iis, qui quaestionem fugitant, bona possident, in caede atque ex caede vivunt. Omnia, iudices, in hac causa sunt misera atque indigna; tamen hoc nihil neque acerbius neque iniquius proferri potest: mortis paternae de servis paternis quaestionem habere filio non licet! Ne tam diu quidem dominus erit in suos, dum ex iis de patris morte quaeratur? Veniam, neque ita multo post, ad hunc locum; nam hoc totum ad Roscios pertinet, de quorum audacia tum me dicturum pollicitus sum, cum Eruci crimina diluissem.

79 XXIX. Nunc, Eruci, ad te venio. Conveniat mihi tecum necesse est, si ad hunc maleficium istud per-

[a] Two of the *advocati* of Roscius, when he demanded his slaves to put to the torture from the praetor Fannius before the trial took place. It is uncertain who they were. Perhaps Scipio is P. Cornelius Scipio Nasica, praetor in 94, a grandson of the Scipio Nasica who slew Tiberius Gracchus.

In the MSS. the name Metellus has no praenomen; if this be M., he may be Marcus Metellus, praetor in 69, brother of Q. Metellus Creticus.

The *advocatus* gave advice and attended court to give moral support, but he was not allowed to speak; this was left to the *patronus.*

daily meals. I now appeal to you, Publius Scipio, and to you, Marcus Metellus[a]: when you were supporting him and acting on his behalf, did he not several times demand two of his father's slaves from his adversaries for the purpose of putting them to the torture? do you not remember that Titus Roscius refused? Well? where are those slaves? Gentlemen, they are in the suite of Chrysogonus, by whom they are highly esteemed and valued. Even now, I demand that they be put to the question, my client begs and entreats you. What are you about? Why 78
do you refuse? Hesitate now, gentlemen, if you can, to decide by whom Sextus Roscius was killed; whether it was by him who, owing to the death of his father, finds himself in poverty and in the midst of snares, who is not even allowed the opportunity of making an inquiry into his father's death, or whether it was those who shirk any inquiry, are in possession of the dead man's property, who live in murder and by murder.[b] Everything in this case, gentlemen, is pitiable and scandalous, but nothing harsher or more unfair than this can be brought forward—that a son should not be allowed to put his father's slaves to the question in regard to his death. Is he not even to remain master of his own slaves long enough for them to be questioned? I will shortly deal with this topic; for all this has to do with the two Roscii and I promised to speak of their audacity as soon as I had refuted the accusations of Erucius.

XXIX. Now, Erucius, I come to you. We must 79
needs agree that, if my client is connected with this crime, he either committed it with his own hand,

[b] *in* (amidst) *caede*, as *sicarii*: *ex* (as the result of) *caede* as *sectores.*

tinet, aut ipsum sua manu fecisse, id quod negas, aut per aliquos liberos aut servos. Liberosne? quos neque ut convenire potuerit neque qua ratione inducere neque ubi neque per quos neque qua spe aut quo pretio, potes ostendere. Ego contra ostendo non modo nihil eorum fecisse Sex. Roscium, sed ne potuisse quidem facere, quod neque Romae multis annis fuerit neque de praediis umquam temere discesserit. Restare tibi videbatur servorum nomen, quo quasi in portum reiectus a ceteris suspicionibus confugere posses; ubi scopulum offendis eius modi, ut non modo ab hoc crimen resilire videas, verum omnem suspicionem in vosmet ipsos recidere intel-
80 legas. Quid ergo est? quo tandem accusator inopia argumentorum confugit? "Eius modi tempus erat," inquit, "ut homines vulgo impune occiderentur; quare hoc tu propter multitudinem sicariorum nullo negotio facere potuisti." Interdum mihi videris, Eruci, una mercede duas res assequi velle, nos iudicio perfundere,[1] accusare autem eos ipsos a quibus mercedem accepisti. Quid ais? vulgo occidebantur? Per quos et a quibus? Nonne cogitas te a sectoribus huc adductum esse? Quid postea? Nescimus per ista tempora eosdem fere sectores fuisse collorum et

[1] *Other readings are* pertundere, percutere, *both in the sense of* "*smite*," pervertere "*to ruin.*"

[a] Cicero assumes this because Erucius had made no attempt to deal with Cicero's answer in § 74 "si ipsum arguis, Romae non fuit."

[b] Literally "to obtain two things for one payment."

[c] *Perfundere* has also been translated "to moisten," in the sense of "only involving us in a suit as a matter of form,

which you are unable to prove,[a] or by the agency of others, free men or slaves. Free men? You are unable to show how he was able to meet them, by what means he persuaded them, where, by whose agency, what expectations he raised, what bribe he offered. I, on the contrary, prove that Sextus Roscius not only did not do, but could not have done, any of these things, seeing that for several years he had neither been in Rome nor had ever left his farm without good reason. It seems that the only thing left to you was to name the slaves; this appeared a kind of harbour where you might take refuge when driven from your other false allegations, instead of which you have struck upon such a sort of rock that you not only see the charge rebound from Sextus Roscius, but also understand that every suspicion recoils upon yourselves.

What then? where, I ask, has the accuser taken 80
refuge, owing to his dearth of arguments? "The times were such," says he, "that men were killed as an ordinary occurrence with impunity; therefore, since there were so many assassins, you could have committed the crime without difficulty." Sometimes, Erucius, you seem to me to want to kill two birds with one stone[b]: to swamp us[c] with legal proceedings and at the same time to accuse those very persons from whom you received payment. What do you say? men were killed as an ordinary occurrence? through whom and by whom? Do you not remember that those who brought you here were the purchasers of confiscated goods? What next? Do we not know that, during the times you mention, cut-throats and cut-purses

your real desire being to accuse those who paid you." But this can hardly be the meaning.

81 bonorum? Ii denique, qui tum armati dies noctesque concursabant, qui Romae erant assidui, qui omni tempore in praeda et in sanguine versabantur, Sex. Roscio temporis illius acerbitatem iniquitatemque obicient et illam sicariorum multitudinem, in qua ipsi duces ac principes erant, huic crimini putabunt fore? qui non modo Romae non fuit, sed omnino, quid Romae ageretur, nescivit, propterea quod ruri assiduus, quem ad modum tute confiteris, fuit.

82 Vereor, ne aut molestus sim vobis, iudices, aut ne ingeniis vestris videar diffidere, si de tam perspicuis rebus diutius disseram. Eruci criminatio tota, ut arbitror, dissoluta est; nisi forte exspectatis, ut illa diluam, quae de peculatu ac de eius modi rebus commenticiis inaudita nobis ante hoc tempus ac nova obiecit; quae mihi iste visus est ex aliqua oratione declamare, quam in alium reum commentaretur; ita neque ad crimen parricidii neque ad eum, qui causam dicit, pertinebant; de quibus quoniam verbo arguit, verbo satis est negare. Si quid est, quod ad testes reservet, ibi quoque nos, ut in ipsa causa, paratiores reperiet, quam putabat.

83 XXX. Venio nunc eo, quo me non cupiditas ducit, sed fides. Nam si mihi liberet accusare, accusarem alios potius, ex quibus possem crescere; quod certum

[a] Another suggested rendering is: "those same brokers were generally the men who broke necks." For the meaning of *sector* see note on § 93.

[b] It had apparently been suggested that Roscius had privately kept back some of his father's property that had been confiscated and belonged to the State.

[c] *Declamare* is a word properly applied to the delivery of a speech on an imaginary case (*causa ficta*) in the rhetorical schools; here it probably means practising a speech at home which it was intended to deliver. *Commentari* is a similar term.

were almost identical.[a] And finally, shall these very men, who then for nights and days were running about armed, who never left Rome, who were always engaged in plundering and murdering—shall they reproach Sextus Roscius with the cruelty and misdeeds of those times, and imagine that the crowd of assassins, of which they themselves were the chiefs and leaders, will be a ground for accusing my client, who was not only not at Rome, but was entirely ignorant of what was going on there, because, as you yourself admit, he always remained in the country? 81

I am afraid, gentlemen, of either wearying you or appearing to distrust your intelligence, should I any longer discuss matters which are so obvious. Erucius's accusation, I venture to think, has been entirely overthrown, unless perhaps you are waiting to hear me answer the charge of embezzlement[b] and other false accusations of the same kind which he has brought, charges which we never heard of before to-day, and which are quite new to us. He seemed to me to be rehearsing them[c] from some other speech, which he was preparing against another accused person, so little did they apply to the charge of parricide or to him who is on his trial. But since they are supported merely by his own word, a simple negative is a sufficient answer. If he is keeping back anything for the witnesses, in regard to that also, as in the cause itself, he will find us better prepared than he expected. 82

XXX. I now come to a matter to which I am led, not by any special liking, but by loyalty to my client. For if it were a pleasure to me to accuse, I would rather accuse other persons, at whose expense I could increase my reputation; but this I am determined 83

est non facere, dum utrumvis licebit. Is enim mihi videtur amplissimus, qui sua virtute in altiorem locum pervenit, non qui ascendit per alterius incommodum et calamitatem. Desinamus aliquando ea scrutari, quae sunt inania; quaeramus ibi maleficium, ubi et est et inveniri potest; iam intelleges, Eruci, certum crimen quam multis suspicionibus coarguatur, tametsi neque omnia dicam et leviter unum quidque tangam. Neque enim id facerem, nisi necesse esset, et id erit signi me invitum facere, quod non persequar longius quam salus huius et mea fides postulabit.

84 Causam tu nullam reperiebas in Sex. Roscio; at ego in T. Roscio reperio. Tecum enim mihi res est, T. Rosci, quoniam istic sedes ac te palam adversarium esse profiteris. De Capitone post viderimus, si, quem ad modum paratum esse audio, testis prodierit; tum alias quoque suas palmas cognoscet, de quibus me ne audisse quidem suspicatur. L. Cassius ille, quem populus Romanus verissimum et sapientissimum iudicem putabat, identidem in causis quaerere solebat, "cui bono" fuisset. Sic vita hominum est, ut ad maleficium nemo conetur sine spe atque
85 emolumento accedere. Hunc quaesitorem ac iudicem fugiebant atque horrebant ii, quibus periculum creabatur, ideo quod, tametsi veritatis erat amicus, tamen natura non tam propensus ad misericordiam quam applicatus[1] ad severitatem videbatur. Ego,

[1] *Novák, Clark*: *other readings* implacatus (*Graevius*) "*unappeased*," implicatus (*MSS.*) "*involved in, given to*"; inclinatus (*Manutius*), incitatus (*Kayser*).

[a] Titus Roscius: that is, Magnus.

[b] L. Cassius Longinus, tribune 137, consul 127, censor 125. He promulgated the *lex Cassia tabellaria*, introducing the ballot for the verdict in criminal courts. As Cicero says here, he was noted for his severity and called *scopulus reorum.*

not to do, as long as the choice of accusing or not is open to me. For that man seems to me most honourable who attains a higher position by his own merit, not the man who finds a means of rising in the misfortune and disaster of another. Let us cease for a while to examine idle charges; let us seek the crime where it is and where it can be discovered. You will then understand, Erucius, how many suspicious circumstances it takes to prove a genuine accusation, although I shall not mention all of them and shall pass over each point lightly. And I would not even do that, unless it were necessary, and the fact that I shall not go further than the safety of my client and my own feeling of duty demand will be a proof that I am acting with regret.

You could find no motive in Sextus Roscius, but I 84
find one in Titus Roscius.[a] It is you, Titus, with whom I have to deal, since you are sitting on the accusers' bench, and openly avow yourself our opponent. We will deal with Capito afterwards, if, as I understand he is ready to do, he comes forward as a witness; he will then learn of other laurels of his, which he does not suspect that I have even heard of. The illustrious Lucius Cassius,[b] whom the Roman people considered the wisest and most conscientious of judges, was in the habit of asking repeatedly in trials, "who had profited by it?" Such is the way of the world: no man attempts to commit a crime without the hope of profit.
He was avoided and dreaded as a judge and juryman 85
by those who were threatened by a criminal charge, because, in spite of his love of truth, he appeared by nature not so much disposed to mercy as inclined to

quamquam praeest huic quaestioni vir et contra audaciam fortissimus et ab innocentia clementissimus, tamen facile me paterer vel illo ipso acerrimo iudice quaerente vel apud Cassianos iudices, quorum etiam nunc ii, quibus causa dicenda est, nomen ipsum re-
86 formidant, pro Sex. Roscio dicere. XXXI. In hac enim causa cum viderent illos amplissimam pecuniam possidere, hunc in summa mendicitate esse, illud quidem non quaererent, cui bono fuisset, sed eo perspicuo crimen et suspicionem potius ad praedam adiungerent quam ad egestatem. Quid, si accedit eodem, ut tenuis antea fueris? quid, si ut avarus? quid, si ut audax? quid, si ut illius, qui occisus est, inimicissimus? num quaerenda causa, quae te ad tantum facinus adduxerit? Quid ergo horum negari potest? Tenuitas hominis eius modi est, ut dissimulari non queat atque eo magis eluceat, quo magis
87 occultatur. Avaritiam praefers, qui societatem coieris de municipis cognatique fortunis cum alienissimo. Quam sis audax, ut alia obliviscar, hinc omnes intellegere potuerunt, quod ex tota societate, hoc est ex tot sicariis, solus tu inventus es, qui cum accusatoribus sederes atque os tuum non modo ostenderes, sed etiam offerres. Inimicitias tibi fuisse cum Sex. Roscio et magnas rei familiaris controversias concedas
88 necesse est. Restat, iudices, ut hoc dubitemus, uter

[a] Ablative absolute. MSS. have *perspicuum*, agreeing with *crimen*. *Eo* will then mean "by that," that is, the fact of the plunder obtained by the robber.

severity. As for myself, although this inquiry is in the hands of a man who shows as much courage in the face of audacity as clemency on the side of innocence, I would willingly consent to defend Sextus Roscius, even before that very searching judge himself or other judges like Cassius, whose name even now strikes with terror accused persons who have to stand their
trial. XXXI. For in this case, seeing the accusers in 86
possession of vast property and my client reduced to beggary, they would have no need to inquire "who had profited by it," but, since there was no doubt about that,[a] they would connect the guilt and the suspicion rather with the possessor of the plunder than with the poor man. What if, in addition, you were formerly poor, avaricious, and audacious? if you were the bitterest enemy of him who was murdered? Need any other motive be sought for, which drove you to this abominable crime? Can any of these facts be denied? This man's poverty is such that it cannot be concealed, and, the greater the efforts that are made
to hide it, the more conspicuous it appears. You display 87
your avarice, seeing that you have entered into a partnership with a perfect stranger to gain possession of the fortune of a kinsman and fellow-townsman. Not to mention other things, everyone has been able to understand the extent of your audacity from the fact that, out of all the members of the association, in other words, out of all those assassins, you alone have allowed yourself to be found sitting among the accusers, and not only let us see your shameless face but even make a show of it. You must admit that enmity and serious disputes about family affairs
existed between you and Sextus Roscius. The only 88
thing that remains, gentlemen, is to consider which

potius Sex. Roscium occiderit, is, ad quem morte eius divitiae venerint, an is, ad quem mendicitas, is, qui antea tenuis fuerit, an is, qui postea factus sit egentissimus, is, qui ardens avaritia feratur infestus in suos, an is, qui semper ita vixerit, ut quaestum nosset nullum, fructum autem eum solum, quem labore peperisset, is, qui omnium sectorum audacissimus sit, an is, qui propter fori iudiciorumque insolentiam non modo subsellia, verum etiam urbem ipsam reformidet, postremo, iudices, id quod ad rem mea sententia maxime pertinet, utrum inimicus potius an filius.

89 XXXII. Haec tu, Eruci, tot et tanta si nanctus esses in reo, quam diu diceres! quo te modo iactares! tempus hercule te citius quam oratio deficeret. Etenim in singulis rebus eius modi materies est, ut dies singulos possis consumere. Neque ego non possum; non enim tantum mihi derogo, tametsi nihil adrogo, ut te copiosius quam me putem posse dicere. Verum ego forsitan propter multitudinem patronorum in grege adnumerer, te pugna Cannensis accusatorem sat bonum fecit. Multos caesos non ad Trasumenum lacum, sed ad Servilium vidimus.

90 Quís ibi non est vúlneratus férro Phrygio? Non necesse est omnes commemorare Curtios,

[a] *Cf.* § 59.

[b] The massacres of the proscribed, in which many of the *accusatores* were slain, is compared to the sanguinary battle of Cannae.

[c] A reservoir in Rome, adjoining the Basilica Iulia, where the Vicus Iugarius opened into the Forum. Here the heads of the slain accusers were exposed.

[d] According to the Scholiast, a verse from the *Achilles* of Ennius. The words are spoken by Ulysses, when excusing himself to Ajax for having taken refuge in the tent of Achilles, after Hector had fired the Greek ships.

of the two is more likely to be the murderer of Sextus Roscius, he to whom this murder has brought wealth, or he whom it has reduced to poverty; he who before it was poor, or he who after it was reduced to beggary; he who, inflamed by avarice, rushes to attack his own relatives, or he who has always lived such a life that he knew nothing about filthy lucre but only about the fruit of his own toil; he who is the most audacious of all the brokers, or he who, owing to his inexperience of the forum and legal processes, dreads not only the sight of these benches, but even the city itself; lastly, gentlemen—and this I consider is of the greatest importance in the matter—one who was the enemy or one who was the son of Roscius.

XXXII. If you, O Erucius, had so many convincing 89 arguments as these in the case of an accused person, how you would throw yourself about,[a] at what length would you speak! Time, by Hercules, rather than words would fail you. In fact, the material is so abundant that you might spend whole days on each detail. Not that I could not do the same; for, without being conceited, I have not so poor an opinion of myself as to think you capable of speaking at greater length than I can. But perhaps, considering the large number of defending counsel, I may only be reckoned as one of a crowd, while the battle of Cannae[b] has made you a tolerably good accuser. We have seen many slain, not near Lake Trasimenus, but at the Servilian[c] basin. "Who was not wounded 90 there by Phrygian steel?"[d] There is no need to enumerate them all, a Curtius, a Marius, and lastly

Marios, denique Memmios,[1] quos iam aetas a proeliis avocabat, postremo Priamum ipsum senem, Antistium, quem non modo aetas, sed etiam leges pugnare prohibebant. Iam quos nemo propter ignobilitatem nominat, sescenti sunt, qui inter sicarios et de veneficiis accusabant; qui omnes, quod ad me attinet, vellem viverent. Nihil enim mali est canes ibi quam plurimos esse, ubi
91 permulti observandi multaque servanda sunt. Verum, ut fit, multa saepe imprudentibus imperatoribus vis belli ac turba molitur. Dum is in aliis rebus erat occupatus, qui summam rerum administrabat, erant interea, qui suis vulneribus mederentur; qui, tamquam si offusa rei publicae sempiterna nox esset, ita ruebant in tenebris omniaque miscebant; a quibus miror, ne quod iudiciorum esset vestigium, non subsellia quoque esse combusta; nam et accusatores et iudices sustulerunt. Hoc commodi est, quod ita vixerunt, ut testes omnes, si cuperent, interficere non possent; nam, dum hominum genus erit, qui accuset eos, non deerit; dum civitas erit, iudicia fient. Verum, ut coepi dicere, et Erucius, haec si haberet in causa, quae commemoravi, posset ea quamvis diu

[1] Mammeos *MSS.*: Memmios *Orsini.*

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[a] Nothing certain is known as to the identity of these *accusatores*

[b] They were too old to fight in battle or in the courts, and being no longer to be feared, their lives were spared. Old men (over 60) were exempt from service in the field and from acting as judges or voting.

[c] Here again (*cf.* § 77) the praenomen is missing. There were two Antistii: (1) Publius, referred to by Cicero (*Brutus*, 226) as a capable pettifogging lawyer (*rabula probabilis*). But he supported Sulla and was put to death by the younger Marius, whereas Cicero is here speaking of those who were put to death in the Sullan proscriptions. (2) L. Antistius,

a Memmius,[a] already withdrawn by age from the field[b]; last of all, the aged Priam himself, Antistius,[c] prohibited from fighting, not only by his age, but also by the laws. Further, there are hundreds whose name is never mentioned owing to their obscurity, who acted as accusers in cases of murder and poisoning. As far as I am concerned, I could wish that they were all living. For there is no harm in there being as many dogs as possible where there are many people
to be watched and many things to be guarded. But, 91
as generally happens, the violence and turmoil of war bring many acts in their train unknown to the generals. While he who wielded the supreme power was occupied with other matters, there were some who in the meantime were attending to their own wounds[d]; these people, as if eternal night had enveloped the republic, rushed about in the darkness and threw everything into confusion. I am surprised that they did not also burn the benches, to prevent any trace of judicial proceedings being left; for they put both accusers and jurymen out of the way. But fortunately they led such a life that they could not have destroyed all the witnesses, even if they had so desired; for as long as the human race exists, there will be no lack of men to accuse them; as long as the State lasts, trials will take place. But, as I have said above, if Erucius had such facts as I have mentioned to support him in a case, he would be able to speak on them as long as he pleased, and I can do the same.

who accused a certain Titus Matrinius of Spoletum, who had been presented by Marius with the Roman citizenship, but there seems no reason to suppose he is referred to here.

[d] By getting rid of their personal opponents; or it may simply mean that they were engaged in trying to retrieve their fortunes.

dicere, et ego, iudices, possum; sed in animo est, quem ad modum ante dixi, leviter transire ac tantum modo perstringere unam quamque rem, ut omnes intellegant me non studio accusare, sed officio defendere.

92 XXXIII. Video igitur causas esse permultas, quae istum impellerent; videamus nunc, ecquae facultas suscipiendi maleficii fuerit. Ubi occisus est Sex. Roscius?—Romae.—Quid? tu, T. Rosci, ubi tunc eras?—Romae. Verum quid ad rem? et alii multi. —Quasi nunc id agatur, quis ex tanta multitudine occiderit, ac non hoc quaeratur, eum, qui Romae sit occisus, utrum veri similius sit ab eo esse occisum, qui assiduus eo tempore Romae fuerit, an ab eo, qui
93 multis annis Romam omnino non accesserit. Age nunc ceteras quoque facultates consideremus. Erat tum multitudo sicariorum, id quod commemoravit Erucius, et homines impune occidebantur. Quid? ea multitudo quae erat? Opinor, aut eorum, qui in bonis erant occupati, aut eorum, qui ab iis conducebantur, ut aliquem occiderent. Si eos putas, qui alienum adpetebant, tu es in eo numero, qui nostra pecunia dives es; sin eos, quos qui leviore nomine appellant, percussores vocant, quaere, in cuius fide sint et clientela; mihi crede, aliquem de societate tua reperies; et, quicquid tu contra dixeris, id cum defensione nostra contendito; ita facillime causa
94 Sex. Rosci cum tua conferetur. Dices: "Quid

[a] The *sectores* or brokers. The word is probably derived from *secare*. As the purchasers of confiscated goods had to take over any debts attached to them, they claimed that a certain percentage should be deducted to counterbalance them, *secare* thus meaning "to cut off" from the price. Others explain that these brokers "cut up" the goods into small parcels to sell again, but this is *auctio* rather than *sectio*.

But, as I said before, it is my intention to pass lightly over and only touch upon each question, that everyone may understand that I am not making an accusation from inclination, but from a sense of duty to my client.

XXXIII. I see, then, that there were many 92
motives that might have driven him to commit the crime. Let us now see whether he had any opportunity of doing so. Where was Sextus Roscius killed? "At Rome." Well, where were you at that time, Titus Roscius? "At Rome. But what has that to do with it? Many others were there as well." As if the present question were to find out who, out of so great a number, committed the crime, and not rather whether it is more probable that Roscius was killed by one who at the time was constantly in Rome, or by one who for many years had not been near Rome at all.

Well, then, let us consider what other opportuni- 93
ties he had. As Erucius has told us, at that time there was a crowd of assassins, and men were killed with impunity. Well, of whom was this crowd composed? I imagine either of those who were occupied in buying properties,[a] or of those who were hired by them to murder somebody. If you think the criminals were those who coveted the property of others, you are one of the number, you who are enriched by our wealth; but if you think they were those who are called by the milder name of bandits, inquire under whose protection, whose dependants they are, and believe me, you will find one of your associates. Whatever you may say to the contrary, compare it with my defence, and so it will be very easy to contrast the case of Sextus Roscius with your own. You 94

postea, si Romae assiduus fui?" Respondebo: "At ego omnino non fui."—"Fateor me sectorem esse, verum et alii multi."—"At ego, ut tute arguis, agricola et rusticus."—"Non continuo, si me in gregem sicariorum contuli, sum sicarius."—"At ego profecto, qui ne novi quidem quemquam sicarium, longe absum ab eius modi crimine." Permulta sunt, quae dici possunt, quare intellegatur summam tibi facultatem fuisse maleficii suscipiendi; quae non modo idcirco praetereo, quod te ipsum non libenter accuso, verum eo magis etiam, quod, si de illis caedibus velim commemorare, quae tum factae sunt ista eadem ratione, qua Sex. Roscius occisus est, vereor, ne ad plures oratio mea pertinere videatur.

95 XXXIV. Videamus nunc strictim, sicut cetera, quae post mortem Sex. Rosci abs te, T. Rosci, facta sunt; quae ita aperta et manifesta sunt, ut me dius fidius, iudices, invitus ea dicam. Vereor enim, cuicuimodi es, T. Rosci, ne ita hunc videar voluisse servare, ut tibi omnino non pepercerim. Cum hoc vereor et cupio tibi aliqua ex parte, quod salva fide possim, parcere, rursus immuto voluntatem meam; venit enim mihi in mentem oris tui. Tene, cum ceteri socii tui fugerent ac se occultarent, ut hoc iudicium non de illorum praeda, sed de huius maleficio videretur, potissimum tibi partes istas depoposcisse, ut in iudicio versarere et sederes cum accusatore? Qua

will say, "If I was constantly in Rome, what follows from that?" I shall reply, "I was never there at all." "I confess that I am a broker, but so are many others." "But I, as you yourself reproach me with being, am a farmer and a rustic." "If I have mixed with a crowd of assassins, it does not follow at once that I am an assassin." "But most certainly I, who do not even know any assassin, am far beyond the reach of such an accusation." There is very much else that might be said, which could make it clear that you had the greatest facilities for committing this crime; but I pass them over, not only because I have no pleasure in accusing you, but more so because, if I wished to speak of all the murders like that of Sextus Roscius which were committed at that time, I am afraid that my speech would seem to be aimed at a number of others.

XXXIV. Let us now examine your proceedings 95
after the death of Roscius with the same brevity as we did your other actions; they are so obvious and palpable, that (so may the god of faith help me!) I regret to speak of them. For I am afraid that, whatever kind of man you are, Titus Roscius, I may be thought to have desired to save my client without sparing you at all. But while I have this fear and desire to spare you to some extent as far as I can without neglecting my duty to my client, I again change my mind, for I think of your effrontery. To think that you, when the rest of your associates took flight and kept themselves hidden, to create the impression that the subject of this trial was not their plunder, but the crime of my client—to think that you should have demanded this rôle before all others for yourself, that you should appear in court and take a seat

in re nihil aliud adsequeris, nisi ut ab omnibus mor-
96 talibus audacia tua cognoscatur et impudentia. Occiso Sex. Roscio quis primus Ameriam nuntiat? Mallius Glaucia, quem iam antea nominavi, tuus cliens et familiaris. Quid attinuit eum potissimum nuntiare, quod, si nullum iam ante consilium de morte ac de bonis eius inieras nullamque societatem neque sceleris neque praemii cum homine ullo coieras, ad te minime omnium pertinebat?—Sua sponte Mallius nuntiat.—Quid, quaeso, eius intererat? An, cum Ameriam non huiusce rei causa venisset, casu accidit, ut id, quod Romae audierat, primus nuntiaret? Cuius rei causa venerat Ameriam? "Non possum," inquit, "divinare." Eo rem iam adducam, ut nihil divinatione opus sit. Qua ratione T. Roscio Capitoni primum nuntiavit? Cum Ameriae Sex. Rosci domus, uxor liberique essent, cum tot propinqui cognatique optime convenientes, qua ratione factum est, ut iste tuus cliens, sceleris tui nuntius, T. Roscio Capitoni
97 potissimum nuntiaret? Occisus est a cena rediens; nondum lucebat, cum Ameriae scitum est. Quid hic incredibilis cursus, quid haec tanta celeritas festinatioque significat? Non quaero, quis percusserit; nihil est, Glaucia, quod metuas; non excutio te, si quid forte ferri habuisti, non scrutor; nihil ad me arbitror pertinere; quoniam, cuius consilio occisus sit, invenio, cuius manu sit percussus, non laboro.

[a] See § 19.

by the accuser. By this you accomplish nothing, except to make your audacity and impudence recognized by everyone. After Sextus Roscius was killed, 96
who first brought the news to Ameria? Mallius Glaucia, whom I have mentioned before,[a] your dependant and intimate friend. Why should he of all men have brought the news which concerned you less than anyone else, had you not already formed a plan regarding Sextus's death and property and had you not entered into partnership with some accomplice to share in the crime and the reward? "Mallius brought the news of his own accord." What had it to do with him, I ask? or, since he had not come to Ameria for this purpose, was it by accident that he was the first to announce what he had heard in Rome? For what reason did he come to Ameria? "I cannot guess." I will bring the matter to such a point that there will be no need of guessing. On what grounds was the news taken to Capito first? Though Sextus Roscius had a house, wife, and children at Ameria, though he had so many relatives and kinsmen, with whom he was on the best of terms, for what reason was it that this man, your client, who brought the news of your crime, chose to bring it to Capito before anyone
else? Roscius was killed when returning from supper; 97
before daybreak it was known at Ameria. What is the meaning of this incredibly rapid journey, this speed and haste? I do not ask who struck the blow; you have nothing to fear, Glaucia; I do not shake you, to see if you had any weapon concealed on your person; I do not search you; I do not think it has anything to do with me; since I have discovered who planned the murder, I do not trouble about whose hand it was that struck the blow. I bring forward

Unum hoc sumo, quod mihi apertum tuum scelus resque manifesta dat : Ubi aut unde audivit Glaucia ? qui tam cito scivit ? Fac audisse statim ; quae res eum nocte una tantum itineris contendere coëgit ? quae necessitas eum tanta premebat, ut, si sua sponte iter Ameriam faceret, id temporis Roma proficisceretur, nullam partem noctis requiesceret ?

XXXV. Etiamne in tam perspicuis rebus argumen-
98 tatio quaerenda aut coniectura capienda est ? Nonne vobis haec, quae audistis, cernere oculis videmini, iudices ? non illum miserum, ignarum casus sui redeuntem a cena videtis, non positas insidias, non impetum repentinum ? non versatur ante oculos vobis in caede Glaucia ? non adest iste T. Roscius ? non suis manibus in curru collocat Automedontem illum, sui sceleris acerbissimi nefariaeque victoriae nuntium ? non orat, ut eam noctem pervigilet, ut honoris sui causa laboret, ut Capitoni quam primum
99 nuntiet ? Quid erat, quod Capitonem primum scire voluit ? Nescio, nisi hoc video, Capitonem in his bonis esse socium ; de tribus et decem fundis tres
100 nobilissimos fundos eum video possidere. Audio praeterea non hanc suspicionem nunc primum in Capitonem conferri ; multas esse infames eius palmas, hanc primam esse tamen lemniscatam, quae Roma ei deferatur ; nullum modum esse hominis occidendi, quo ille non aliquot occiderit, multos ferro, multos

[a] The charioteer of Achilles, noted for his fast driving.

[b] Another rendering is "to be conferred on him at Rome." *Palma lemniscata* was a palm-branch or crown ornamented with hanging, coloured ribbons, which was considered the victor's highest reward.

this one point only, which your manifest guilt and the evidence of the facts supply me with : where and from whom did Glaucia hear of the murder ? how did he come to know it so quickly ? Admit that he heard of it at once ; what forced him to make so long a journey in a hurry in a single night ? what pressing necessity obliged him, if he was going to Ameria of his own accord, to set out from Rome at such an hour, and spend a sleepless night ?

XXXV. When the facts are so evident, is there still
any need to seek for arguments or grasp at conjec- 98
tures ? Does it not seem to you, gentlemen, that you can actually see what you have heard ? do you not see that unfortunate man returning from supper, without suspicion of the fate that awaits him ? do you not see the ambush laid, the sudden attack ? is not Glaucia before your eyes implicated in the murder ? Is not that Titus Roscius present ? Does he not with his own hands place that Automedon [a] in the chariot, to carry the news of his most heinous crime and impious victory ? Does he not beg him to spend a sleepless night, to do his best out of personal regard for him, to carry the news to Capito without delay ?
What was his reason for wishing that Capito should 99
be the first to know it ? I do not know, but this I notice, that Capito has a share in the property of Roscius, I know that he is in possession of three of the
finest farms out of thirteen. Further, I have heard 100
that this is not the first time that Capito has been suspected of such transactions; he possesses a number of prizes for infamous victories, but this is the first grand triumph to be brought to him from Rome [b] ; there is no way of committing murder which he has not employed for killing a certain number of men,

veneno; habeo etiam dicere, quem contra morem maiorum minorem annis LX de ponte in Tiberim deiecerit; quae, si prodierit atque adeo cum prod-
101 ierit (scio enim proditurum esse), audiet. Veniat modo, explicet suum volumen illud, quod ei planum facere possum Erucium conscripsisse; quod aiunt illum Sex. Roscio intentasse et minitatum esse se omnia illa pro testimonio esse dicturum. O praeclarum testem, iudices! o gravitatem dignam expectatione! o vitam honestam atque eius modi, ut libentibus animis ad eius testimonium vestrum ius iurandum accommodetis! Profecto non tam perspicue nos istorum maleficia videremus, nisi ipsos caecos redderet cupiditas et avaritia et audacia.

102 XXXVI. Alter ex ipsa caede volucrem nuntium Ameriam ad socium atque adeo magistrum suum misit, ut, si dissimulare omnes cuperent se scire, ad quem maleficium pertineret, tamen ipse apertum suum scelus ante omnium oculos poneret. Alter, si dis immortalibus placet, testimonium etiam in Sex. Roscium dicturus est; quasi vero id nunc agatur, utrum, is quod dixerit, credendum ac non, quod fecerit, vindicandum sit. Itaque more maiorum comparatum est, ut in minimis rebus homines amplis-

[a] There was an old proverb: *sexagenarios de ponte* ("men of sixty from the bridge"). Ovid (*Fasti*, v. 634) explains this of the younger men driving the old men from the *pontes* or gangways that led to the voting-enclosure, so that they might control the elections. But Cicero clearly refers to a tradition that *sexagenarii* were thrown from the Sulpician bridge either to get rid of the surplus population after the capture of Rome by the Gauls in 390 B.C., or as human sacrifices, for which later on dummy figures of rushes were substituted. Cicero says that Capito had thrown a man over the bridge and attempts to be witty by saying that he had violated the *mos maiorum* because the man was under

some by the dagger, some by poison. I can even give you an example of one man, though less than sixty, whom, contrary to the custom of our ancestors, he threw from the bridge into the Tiber.[a] All these exploits of his, if, or rather when, he comes forward as a witness—for I know that he will do so—he shall hear of from me. Only let him come, let him open his roll, 101
which I can prove was written for him by Erucius—the roll which he is said to have flourished in the face of Sextus Roscius, with the threat that he would state all the facts contained in it as evidence. What an admirable witness, gentlemen! a weighty authority who deserves all your attention! an honourable character, to whose evidence you should be ready to adapt your verdict! Assuredly, we should not see so clearly into these men's crimes, unless they themselves were rendered blind by greed and avarice and audacity.

XXXVI. One of them,[b] immediately after the 102
murder, sent a speedy messenger to his partner or rather master, at Ameria, so that, even if everyone had desired to conceal his knowledge of the author of the murder, he himself would have exposed his crime openly before the eyes of all men. The other,[c] (if it so please the immortal gods)[d] is also going to give evidence against Sextus Roscius, as if it were now a question of the credibility of his words, and not rather of the punishment of his actions. And so it was established by the custom of our ancestors, that, even in the least important things, men of the greatest

60. See Sir J. G. Frazer, Ovid, *Fasti*, vol. iv. note on v. 621, especially pp. 79 *seqq*.

[b] Titus Roscius Magnus.

[c] Capito.

[d] The exclamation expresses indignation at the idea of such a thing happening.

103 simi testimonium de sua re non dicerent. Africanus, qui suo cognomine declarat tertiam partem orbis terrarum se subegisse, tamen, si sua res ageretur, testimonium non diceret; nam illud in talem virum non audeo dicere: Si diceret, non crederetur. Videte nunc, quam versa et mutata in peiorem partem sint omnia. Cum de bonis et de caede agatur, testimonium dicturus est is, qui et sector est et sicarius, hoc est qui et illorum ipsorum bonorum, de quibus agitur, emptor atque possessor est et eum hominem
104 occidendum curavit, de cuius morte quaeritur. Quid? tu, vir optume, ecquid habes quod dicas? mihi ausculta: vide, ne tibi desis; tua quoque res permagna agitur. Multa scelerate, multa audaciter, multa improbe fecisti, unum stultissime, profecto tua sponte, non de Eruci sententia: nihil opus fuit te istic sedere; neque enim accusatore muto neque teste quisquam utitur eo, qui de accusatoris subsellio surgit. Huc accedit, quod paulo tamen occultior atque tectior vestra ista cupiditas esset. Nunc quid est, quod quisquam ex vobis audire desideret, cum, quae facitis, eius modi sint, ut ea dedita opera a nobis contra vosmet ipsos facere videamini?

105 Age nunc illa videamus, iudices, quae statim consecuta sunt. Ad Volaterras in castra L. Sullae mors Sex. Rosci quadriduo, quo is occisus est, Chrysogono nuntiatur. XXXVII. Quaeritur etiam nunc, quis

[a] The younger.

[b] As an accuser, it is no good your sitting by the side of Erucius without opening your mouth; further, the evidence given by an accuser is tainted.

distinction should not give evidence in a case that concerned themselves. Africanus,[a] who declares by 103 his surname that he conquered a third part of the world, would nevertheless have refused to give evidence in a case in which his interests were at stake: for I do not venture to say in regard to such a man that, had he spoken, he would not have been believed. Consider now how everything has changed and altered for the worse. When it is a question of property and murder, a man is going to give evidence, one who is both a broker and an assassin, that is, he who is the purchaser and possessor of the very properties which are in question, and contrived the murder of the man whose death is the subject of investigation. What is it, most honourable sir? have you anything 104 to say? Listen to me. Take care that you do not desert yourself; your personal interest also is seriously at stake. You have committed many crimes, many audacious and shameless acts; but you have also been guilty of one very great folly, undoubtedly of your own accord, not on the advice of Erucius. There was no need for you to sit there; for no one employs an accuser who is dumb, nor a witness who gets up from the accuser's bench.[b] In addition to this, your partisanship would be to some extent more secret and concealed. But as it is, what is there that anyone would desire to hear from you, since everything you do is such that you seem intentionally to be acting on our behalf against yourselves?

Come, gentlemen, let us now see what took place 105 immediately after the murder. Four days after Roscius had been killed, the news was taken to Chrysogonus in the camp of Lucius Sulla at Volaterrae. XXXVII. Does anyone still ask who sent the messen-

eum nuntium miserit? nonne perspicuum est eundem, qui Ameriam? Curat Chrysogonus, ut eius bona veneant statim; qui non norat hominem aut rem. At qui ei venit in mentem praedia concupiscere hominis ignoti, quem omnino numquam viderat? Soletis, cum aliquid huiusce modi audistis, iudices, continuo dicere: "Necesse est aliquem dixisse municipem aut vicinum; ii plerumque indicant, per eos plerique produntur." Hic nihil est, quod su-
106 spicionem hoc putetis.[1] Non enim ego ita disputabo: "Veri simile est Roscios istam rem ad Chrysogonum detulisse; erat enim eis cum Chrysogono iam antea amicitia; nam cum multos veteres a maioribus Roscii patronos hospitesque haberent, omnes eos colere atque observare destiterunt ac se in Chrysogoni
107 fidem et clientelam contulerunt." Haec possum omnia vere dicere, sed in hac causa coniectura nihil opus est; ipsos certo scio non negare ad haec bona Chrysogonum accessisse impulsu suo. Si eum, qui indicii partem acceperit, oculis cernetis, poteritisne dubitare iudices, quis indicarit? Qui sunt igitur in istis bonis, quibus partem[2] Chrysogonus dederit? Duo Roscii. Num quisnam praeterea? Nemo est, iudices. Num ergo dubium est, quin ii obtulerint hanc praedam Chrysogono, qui ab eo partem praedae tulerunt?

108 Age nunc ex ipsius Chrysogoni iudicio Rosciorum

[1] *Other readings* suspicione occupetis *Madvig*: suspicioni locum detis *Müller*: suspiciosum hoc putetis *Halm-Sternkopf.*

[2] *Other readings* pretium *Eberhard*: premium *Schmalz.*

ger? Is it not clear that it was the same man who sent him to Ameria? Chrysogonus saw to it that Roscius's property was sold at once, although he neither knew who Roscius was nor the facts of the case. But how did it come into his head to covet the farms of a man whom he did not know, whom he had never seen in his life? Gentlemen, on hearing anything of this kind, you are accustomed to say at once: "Some fellow-townsman or neighbour must have told him; it is generally they who give information, it is by them that most people are betrayed." In this case there is no ground for your regarding this as a mere suspicion. For I shall not argue as follows: "It 106
is probable that the Roscii informed Chrysogonus about the matter; for they had long been on friendly terms with him, in fact, although they had many ancient hereditary patrons and guest-friends, they ceased to treat them with attention and respect, and put themselves under the protection and patronage of Chrysogonus." All this I can say with truth, but, 107
in this case there is no need of conjecture. I am convinced that they themselves do not deny that Chrysogonus took possession of this property at their instigation. If you see with your own eyes the man who has received his share as an informer, will you have any doubt as to the author of the information? Who then are the people, in the matter of this property, to whom Chrysogonus has given a share? The two Roscii. Is there anyone else? Nobody, gentlemen. Can there be any doubt, then, that this booty was offered to Chrysogonus by those who obtained a share of it from him?

But come now, let us turn to Chrysogonus himself, 108
and consider what was his judgement of what the

factum consideremus. Si nihil in ista pugna Roscii, quod operae pretium esset, fecerant, quam ob causam a Chrysogono tantis praemiis donabantur? si nihil aliud fecerunt nisi rem detulerunt, nonne satis fuit iis gratias agi, denique, ut perliberaliter ageretur, honoris aliquid haberi? Cur tria praedia tantae pecuniae statim Capitoni dantur? cur, quae reliqua sunt, iste T. Roscius omnia cum Chrysogono communiter possidet? Nonne perspicuum est, iudices, has manubias Rosciis Chrysogonum re cognita concessisse?

109 XXXVIII. Venit in decem primis legatus in castra Capito. Totam vitam, naturam moresque hominis ex ipsa legatione cognoscite. Nisi intellexeritis, iudices, nullum esse officium, nullum ius tam sanctum atque integrum, quod non eius scelus atque perfidia violarit et imminuerit, virum optimum esse eum
110 iudicatote. Impedimento est, quo minus de his rebus Sulla doceatur, ceterorum legatorum consilia et voluntatem Chrysogono enuntiat, monet, ut provideat, ne palam res agatur, ostendit, si sublata sit venditio bonorum, illum pecuniam grandem amissurum, sese capitis periculum aditurum; illum acuere, hos, qui simul erant missi, fallere, illum identidem monere, ut caveret, hisce insidiose spem falsam ostendere, cum illo contra hos inire consilia, horum consilia illi enuntiare, cum illo partem suam

[a] See § 25.

Roscii did. If, in this combat, they had rendered no valuable service, why were they so generously rewarded by Chrysogonus? If they did nothing else but lodge the information, would it not have been enough to thank them, or, at the most, to make them some small pecuniary acknowledgement as a proof of their generosity? Why are three such valuable farms at once given to Capito? Why is Titus Roscius in possession of all the rest in common with Chrysogonus? Is it not clear, gentlemen, that Chrysogonus, after investigation, gave up these spoils to the Roscii?

XXXVIII. Capito came to the camp as one of the 109
deputies among the ten heads of the decurions.[a] Now learn thoroughly the manner of life, the nature and character of the man from his behaviour on the deputation alone. If you are not convinced, gentlemen, that there is no duty, no right so sacred and inviolable that his wickedness and perfidy have not violated and trampled under foot, why then you may
judge him to be a most honourable man. He pre- 110
vented Sulla from being informed about these matters; he revealed the plans and intentions of the other deputies to Chrysogonus; he advised him to take measures to prevent the affair being dealt with openly; he pointed out that, if the sale of the property were cancelled, Chrysogonus would lose a large sum of money and he himself would be in danger of his life; he incited Chrysogonus and deceived his fellow-deputies; he frequently warned him to be on his guard and cunningly held out false hopes to the others; he formed plans against them with him, and revealed their intentions; he came to an agreement with him as to his share in the booty, while he deprived

depecisci, hisce aliqua ficta mora semper omnes aditus ad Sullam intercludere. Postremo isto hortatore, auctore, intercessore ad Sullam legati non adierunt; istius fide ac potius perfidia decepti, id quod ex ipsis cognoscere poteritis, si accusator voluerit testimonium eis denuntiare, pro re certa
111 spem falsam domum rettulerunt. In privatis rebus si qui rem mandatam non modo malitiosius gessisset sui quaestus aut commodi causa, verum etiam neglegentius, eum maiores summum admisisse dedecus existimabant. Itaque mandati constitutum est iudicium non minus turpe quam furti, credo, propterea quod, quibus in rebus ipsi interesse non possumus, in iis operae nostrae vicaria fides amicorum supponitur; quam qui laedit, oppugnat omnium commune praesidium et, quantum in ipso est, disturbat vitae societatem. Non enim possumus omnia per nos agere; alius in alia est re magis utilis. Idcirco amicitiae comparantur, ut commune com-
112 modum mutuis officiis gubernetur. Quid recipis mandatum, si aut neglecturus aut ad tuum commodum conversurus es? cur mihi te offers ac meis commodis officio simulato officis et obstas? Recede de medio; per alium transigam. Suscipis onus

[a] That the sale of the property should be put off.
[b] We should say, "subpoena them."
[c] A mandate (commission, trust) is "a contract in which one person (*mandatarius*) promises to do or give something, without remuneration, at the request of another (*mandator*")". (W. A. Hunter, *Roman Law*.) It arises from consent, and no special form of words is necessary. The *mandatarius*

the others of all access to Sulla by constantly alleging some fictitious reason for delay. Finally, by his encouragement, advice, and guarantee,[a] he prevented the deputies from approaching Sulla; they, deceived by his word, or rather, by his broken word—as you will be able to learn from themselves, if the accuser desires to summon them as witnesses[b]—instead of a positive result took back with them nothing but false
hopes. In private affairs, one who had carried out a 111
trust[c]—I do not say fraudulently for his own profit or advantage, but even somewhat carelessly—was thought by our ancestors to have behaved in a most dishonourable manner. Accordingly, an action for breach of trust was established, the result of which involved as much disgrace as an action for theft. I suppose the reason for this was that, in matters in which we ourselves are unable to take a personal part, the promise of our friends is substituted for our own exertions; and one who violates this promise attacks what is the common safeguard of all, and, as far as it is in his power, ruins all social life. For we cannot do everything by ourselves; each has his part to play, in which he can be more useful than others. That is why friendships are formed—that the common interest
may be furthered by mutual services. Why accept 112
a trust, if you intend to neglect it or turn it to your own advantage? Why do you offer to help me, and by pretended service stand in the way of and thwart my interests? Go away; I will get someone else to transact my business. You undertake the burden

was responsible for any loss wilfully caused or due to carelessness. A wilful breach of duty as a *mandatarius* when proved was punished by *infamia*, which excluded him from political life.

officii, quod te putas sustinere posse; quod minime videtur grave iis, qui minime ipsi leves sunt. XXXIX. Ergo idcirco turpis haec culpa est, quod duas res sanctissimas violat, amicitiam et fidem. Nam neque mandat quisquam fere nisi amico neque credit nisi ei, quem fidelem putat. Perditissimi est igitur hominis simul et amicitiam dissolvere et fallere
113 eum, qui laesus non esset, nisi credidisset. Itane est? in minimis rebus qui mandatum neglexerit, turpissimo iudicio condemnetur necesse est, in re tanta cum is, cui fama mortui, fortunae vivi commendatae sunt atque concreditae, ignominia mortuum, inopia vivum[1] adfecerit, is inter honestos homines atque adeo inter vivos numerabitur? In minimis privatisque rebus etiam neglegentia mandati in crimen iudiciumque infamiae vocatur,[2] propterea quod, si recte fiat, illum neglegere oporteat, qui mandarit, non illum, qui mandatum receperit; in re tanta, quae publice gesta atque commissa sit, qui non neglegentia privatum aliquod commodum laeserit, sed perfidia legationis ipsius caerimoniam polluerit maculaque adfecerit, qua is tandem poena adficietur aut quo iudicio damna-
114 bitur? Si hanc ei rem privatim Sex. Roscius man-

[1] *Inserted by Halm*: adfecerit MSS.
[2] MSS. infamia revocatur: infamia rei *Richter*. "*owing to the disgraceful character of the action.*"

[a] The reading in the text may be thus explained: a man of strong character will not think such a burden heavy, but one who is light (*i.e.* weak-minded, without character) will. Various alterations have been suggested: *maxime* for the first *minime*; or *leve* for *grave*; or *non posse* for *posse*.

[b] If the mandatory has done what he ought to do. The mandator can afford to be negligent, as he trusts his mandatory.

of a duty which you think you can support; a burden which seems by no means heavy to those who are themselves by no means weak-minded.[a]

XXXIX. That is why one who does not carry out a trust is guilty of a disgraceful fault, because he violates two things that are most sacred—friendship and good faith. For as a rule no one entrusts a commission to anyone but a friend, and only trusts one whom he believes to be faithful. It is therefore the act of an utterly abandoned man to destroy friendship and at the same time to deceive one who would not have suffered injury unless he had trusted him. Is 113
it not so? If in a matter of very little importance a man who has neglected his trust cannot escape condemnation by a most disgraceful sentence, in a case so grave as the present, when the man, to whom the reputation of the dead and the fortunes of the living have been committed and entrusted, has attainted the dead with ignominy and the living with penury, shall he be reckoned among honourable men, or rather, even among the living? In private affairs of the least importance, even negligence on the part of a mandatory is made the subject of a charge and a sentence involving disgrace, because, if all is in order,[b] it is the one who has given the mandate, and not the one who has accepted it, that may be allowed to be negligent. In a trust of such grave importance, which was publicly arranged and entrusted to him, what punishment, I ask you, shall be inflicted upon one who has not merely injured some private interest by his carelessness, but by his perfidy has violated and defiled the sacred character of the deputation itself? by what sentence shall he be condemned? If as a private person Sextus had 114

davisset, ut cum Chrysogono transigeret atque decideret, inque eam rem fidem suam, si quid opus esse putaret, interponeret, illeque sese facturum recepisset, nonne, si ex eo negotio tantulum in rem suam convertisset, damnatus per arbitrum et rem
115 restitueret et honestatem omnem amitteret? Nunc non hanc ei rem Sex. Roscius mandavit, sed, id quod multo gravius est, ipse Sex. Roscius cum fama, vita bonisque omnibus a decurionibus publice T. Roscio mandatus est; et ex eo T. Roscius non paulum nescio quid in rem suam convertit, sed hunc funditus evertit bonis, ipse tria praedia sibi depectus est, voluntatem decurionum ac municipum omnium tantidem quanti fidem suam fecit.

116 XL. Videte iam porro cetera, iudices, ut intellegatis maleficium nullum fingi posse, quo iste sese non contaminarit. In rebus minoribus socium fallere turpissimum est aequeque turpe atque illud, de quo ante dixi; neque iniuria, propterea quod auxilium sibi se putat adiunxisse, qui cum altero rem communicavit. Ad cuius igitur fidem confugiet, cum per eius fidem laeditur, cui se commiserit? Atque ea sunt animadvertenda peccata maxime, quae difficillime praecaventur. Tecti esse ad alienos possumus,

[a] Generally taken to mean that Sextus told Capito he might give Chrysogonus a guarantee in his (Sextus's) name that he would recognize the arrangement concluded by Titus. But why should Sextus give such a guarantee? A better version is: that Capito should give his word of honour to do his best conscientiously and on his own responsibility.

[b] An *arbiter* had not (like a *iudex*) to give his decision according to a formula prescribed for him by a praetor, but it was left to his discretion to do so according to *bona fides* (fair dealing) after weighing the claims on each side and circumstances generally (see more in *Pro Roscio Comoedo*, § 10).

entrusted this matter to him to settle and make an agreement with Chrysogonus, and, if he thought it necessary, give his word [a] to promote that object; and if Capito had undertaken this mission, and had made ever so little profit out of the transaction, would he not be condemned before an arbitrator [b] to make restitution and entirely lose his good name? As it 115
is, it was not Sextus Roscius who entrusted the matter to him but—what is far more serious—Sextus Roscius himself, together with his reputation, life, and all his property was publicly entrusted by the decurions to the care of Titus Roscius, who has converted no small trifle connected with the affair to his own advantage, but has ejected my client from his property neck and crop and bargained for three farms for himself, and has shown as little regard for the intention of the decurions and all his fellow-townsmen as for his own honour.

XL. Proceed now, gentlemen, to examine the rest 116
of his actions, that you may understand that no misdeed can be imagined with which he has not defiled himself. It is most disgraceful to deceive a partner in trifling matters, as disgraceful as such conduct as I have mentioned before. And it is rightly so regarded, because a man who has entered into partnership with another thinks that he has associated himself with one who will be a help to him. Where then shall he look for faith, when injured by his faith in the man to whom he has trusted himself? [c] Besides, those offences against which it is most difficult to take precautions deserve the severest punishment. We can be reserved with strangers, our intimate

[c] *Fides* appears to be used in two senses: (1) honour, good faith; (2) belief in the honour of another.

intimi multa apertiora videant necesse est; socium cavere qui possumus? quem etiam si metuimus, ius officii laedimus. Recte igitur maiores eum, qui socium fefellisset, in virorum bonorum numero non
117 putarunt haberi oportere. At vero T. Roscius non unum rei pecuniariae socium fefellit (quod tametsi grave est, tamen aliquo modo posse ferri videtur), verum novem homines honestissimos, eiusdem muneris, legationis, officii mandatorumque socios, induxit, decepit, destituit, adversariis tradidit, omni fraude et perfidia fefellit; qui de eius scelere suspicari nihil potuerunt, socium officii metuere non debuerunt, eius malitiam non viderunt, orationi vanae crediderunt. Itaque nunc illi homines honestissimi propter istius insidias parum putantur cauti providique fuisse; iste, qui initio proditor fuit, deinde perfuga, qui primo sociorum consilia adversariis enuntiavit, deinde societatem cum ipsis adversariis coiit, terret etiam nos ac minatur tribus praediis, hoc est praemiis sceleris, ornatus. In eius modi vita, iudices, in his tot tantisque flagitiis hoc quoque maleficium, de quo iudicium est, reperietis.
118 Etenim quaerere ita debetis: ubi multa avare, multa audacter, multa improbe, multa perfidiose facta videbitis, ibi scelus quoque latere inter illa tot flagitia putatote. Tametsi hoc quidem minime latet,

friends must see many of our acts more clearly; but how can we take precautions against a partner, since even to feel uneasy about his conduct is a violation of the law of duty? Rightly, therefore, our ancestors maintained that one who had deceived his partner ought not to be reckoned among honourable people.
But in truth Titus Roscius did not deceive merely a 117
single partner in a matter of money, which, although a grave offence, may to a certain extent be endurable. It was nine most honourable men, associated with him in the same office, deputation, duty, and mandate, whom he entrapped, deceived, deserted, handed over to their adversaries, and cheated by every kind of fraud and perfidy. These men could not have the least suspicion of his wickedness, they were bound not to feel any anxiety about the man who was their partner in duty, they did not see his rascality, they believed his delusive words. This is why those most honourable men, owing to his craftiness, are at the present time considered to have been wanting in caution and foresight; he, who was in the beginning a traitor, then a deserter, who first revealed the intentions of his associates to their adversaries, and then formed an association with those adversaries themselves, still intimidates and threatens us, and that decorated with three farms, the reward of his crime. In a life of this kind, gentlemen, amongst so many shameful acts, you will also find the crime which is
the subject of this trial. For you ought to carry on 118
your inquiry on the following principle: wherever you find numerous examples of greed, audacity, depravity, and perfidy, you may feel sure that crime also lies concealed among all these shameful acts. And yet about this crime there is no concealment; it is so

quod ita promptum et propositum est, ut non ex illis maleficiis, quae in illo constat esse, hoc intellegatur, verum ex hoc etiam, si quo de illorum forte dubitabitur, convincatur. Quid tandem, quaeso, iudices? num aut ille lanista omnino iam a gladio recessisse videtur aut hic discipulus magistro tantulum de arte concedere? Par est avaritia, similis improbitas, eadem impudentia, gemina audacia.

119 XLI. Etenim, quoniam fidem magistri cognostis, cognoscite nunc discipuli aequitatem. Dixi iam antea saepe numero postulatos esse ab istis duos servos in quaestionem. Tu semper, T. Rosci, recusasti. Quaero abs te: "Iine, qui postulabant, indigni erant, qui impetrarent, an is te non commovebat, pro quo postulabant, an res ipsa tibi iniqua videbatur?" Postulabant homines nobilissimi atque integerrimi nostrae civitatis, quos iam antea nominavi; qui ita vixerunt talesque a populo Romano putantur, ut, quicquid dicerent, nemo esset, qui non aequum putaret. Postulabant autem pro homine miserrimo atque infelicissimo, qui vel ipse sese in cruciatum dari cuperet, dum de patris morte
120 quaereretur. Res porro abs te eius modi postulabatur, ut nihil interesset, utrum eam rem recusares an de maleficio confiterere. Quae cum ita sint, quaero abs te, quam ob causam recusaris. Cum occiditur Sex. Roscius, ibidem fuerunt. Servos ipsos, quod ad me attinet, neque arguo neque purgo; quod

[a] *Cf. De inventione*, i. 41 "quod simile erit ei negotio, quo de agitur" for the transposition of *de*.

[b] MSS. have *a gladiatore*, "to have given up his character as gladiator."

[c] That is, your refusal amounted to confessing the crime.

manifest and exposed to view, that it not only can be inferred from those misdeeds which he has undoubtedly committed, but, if there should be a doubt about any one of them,[a] it could be clearly proved by this crime. I ask you, gentlemen, what is your opinion? Does the master gladiator seem to have laid down his sword altogether,[b] or his pupil here to be ever so little inferior to his master in skill? Their greed is equal, their depravity similar, their impudence the same, their audacity twin.

XLI. And, since you have learnt what is the good 119
faith of the master, now learn the fairness of the pupil. I have said before that the opponents have been frequently asked for two slaves to put to the question. You, Titus Roscius, always refused. I ask you: were those who made the request unworthy of obtaining what they asked for? did not he on whose behalf they asked arouse your sympathies? did the request itself appear to you unjust? Those who made the request were the noblest and most upright men in our city, whose names I have already mentioned; their life and the esteem with which they are regarded by the Roman people have always been such that, whatever they might say, no one would think it unfair. Moreover, they made the request on behalf of a most miserable and unfortunate man, who would be ready, if necessary, to give himself to the torture, provided there were an inquiry into the
death of his father. Further, the request made to 120
you was of such a kind that it made no difference whether you refused it or confessed the crime.[c] This being so, I ask you why you refused it. When Roscius was killed, they were on the spot. The slaves themselves, for my part, I neither accuse nor exculpate;

a vobis oppugnari video, ne in quaestionem dentur, suspiciosum est; quod vero apud vos ipsos in honore tanto sunt, profecto necesse est sciant aliquid, quod si dixerint, perniciosum vobis futurum sit. — In dominos quaeri de servis iniquum est. — At neque in vos quaeritur[1]; Sex. enim Roscius reus est; neque in dominum, cum de hoc quaeritur[2]; vos enim dominos esse dicitis. — Cum Chrysogono sunt. — Ita credo; litteris eorum et urbanitate Chrysogonus ducitur, ut inter suos omnium deliciarum atque omnium artium puerulos ex tot elegantissimis familiis lectos velit hos versari, homines paene operarios, ex Amerina disci-
121 plina patris familiae rusticani. Non ita est profecto, iudices; non est veri simile, ut Chrysogonus horum litteras adamarit aut humanitatem, non ut rei familiaris negotio diligentiam cognorit eorum et fidem. Est quiddam, quod occultatur; quod quo studiosius ab istis opprimitur et absconditur, eo magis
122 eminet et apparet. XLII. Quid igitur? Chrysogonus suine maleficii occultandi causa quaestionem de iis haberi non vult? Minime, iudices; non in omnes arbitror omnia convenire. Ego in Chrysogono, quod ad me attinet, nihil eius modi suspicor; neque hoc

[1] at ne quaeritur *MSS.*: at neque in vos quaeritur *Madvig*: at non neque in dominos quaeritur *Kayser*.

[2] neque enim cum de hoc quaeritur *MSS.*: neque enim cum de hoc quaeritur in dominos quaeritur *Halm*: neque in dominum, cum de hoc quaeritur *Müller*.

[a] As in Greece, the voluntary evidence given by slaves was not accepted, except in special cases, such as the Catilinarian conspiracy. As a rule they were tortured to make them confess what it was wanted to prove. Slaves could not, however, be tortured to prove their master's guilt, unless he consented.

[b] In this case, the slaves of Roscius were in an ambiguous

but that you oppose their being put to the question is suspicious, and their being treated by you with such consideration certainly shows that they must know something which would be ruinous to you if they revealed it. "It is contrary to justice that slaves should be examined against their masters."[a] But neither is any examination against you—for it is Sextus Roscius who is accused—nor against their master, since this concerns my client—for you say that you are their masters.[b] "They are with Chrysogonus." Yes, of course; their culture and elegant manners are so attractive to Chrysogonus that he wishes these men, little better than labourers trained by a country householder of Ameria, to associate with his young slaves possessed of every charm and accomplishment, picked out from so many of the highest households.

No, gentlemen, this is certainly not the case; it is 121 improbable that Chrysogonus took a fancy to their culture and good manners or that he appreciated their diligence and fidelity in his household affairs. There is something behind this, which, the greater the efforts made by them to suppress and conceal it, the more evident and conspicuous it becomes.

XLII. What then? is Chrysogonus unwilling that 122 they should be put to the question in order to conceal his own crime? By no means, gentlemen; I do not think that all accusations are applicable to everyone. As far as I am concerned, I have no such suspicion in regard to Chrysogonus, and this is not the first

position: they had been his and were not so now. Their evidence might be able to prove the guilt of the two Roscii, but would not be *in dominos*, since Sextus Roscius is the defendant.

mihi nunc primum in mentem venit dicere. Meministis me ita distribuisse initio causam: in crimen, cuius tota argumentatio permissa Erucio est, et in audaciam, cuius partes Rosciis impositae sunt. Quicquid maleficii, sceleris, caedis erit, proprium id Rosciorum esse debebit. Nimiam gratiam potentiamque Chrysogoni dicimus et nobis obstare et perferri nullo modo posse et a vobis, quoniam potestas data est, non modo infirmari, verum etiam
123 vindicari oportere. Ego sic existimo, qui quaeri velit ex iis, quos constat, cum caedes facta sit, adfuisse, eum cupere verum inveniri; qui recuset, eum profecto, tametsi verbo non audeat, tamen re ipsa de maleficio suo confiteri. Dixi initio, iudices, nolle me plura de istorum scelere dicere, quam causa postularet ac necessitas ipsa cogeret. Nam et multae res adferri possunt, et una quaeque earum multis cum argumentis dici potest. Verum ego, quod invitus ac necessario facio, neque diu neque diligenter facere possum. Quae praeteriri nullo modo poterant, ea leviter, iudices, attigi, quae posita sunt in suspicionibus, de quibus si coepero dicere, pluribus verbis sit disserendum, ea vestris ingeniis coniecturaeque committo.

124 XLIII. Venio nunc ad illud nomen aureum Chrysogoni, sub quo nomine tota societas latuit; de quo, iudices, neque quo modo dicam neque quo modo taceam, reperire possum. Si enim taceo, vel maximam partem relinquo; sin autem dico, vereor, ne

[a] In allusion to the wealth amassed by him during the time of the proscriptions and also to the first element *χρυσο-* (golden) of the compound (*γόνος* = born); *cf.* Dion Chrysostom (*χρυσόστομος*), the golden-mouthed.

time that it has occurred to me to say so. You will remember that, at the beginning of my speech, I divided the case as follows: the charge—the duty of proving this has been left entirely to Erucius; audacity—the rôle of which has been assigned to the Roscii. Whatever misdeed, crime, or murder shall be found, will have to be assigned to them as their own. As to Chrysogonus, we say that his excessive influence and power is in our way and cannot be endured, and that, since you, gentlemen, have the power to do so, it ought not only to be weakened by you,
but also punished. I hold this opinion: that one who 123
wishes those to be put to the question who it is certain were present when the murder was committed, desires the truth to be revealed, and that one who refuses it assuredly confesses his crime by his action, although he dare not do so in words. I said, at the beginning of this part of my speech, gentlemen, that I did not wish to say more about these men's crime than the case required and necessity compelled me. For many allegations can be made, each of which could be discussed with many arguments. But I cannot spend time or trouble on what I do unwillingly and by compulsion. I have touched lightly, gentlemen, upon such points as could not possibly be passed over in silence; those that rest on suspicion—which, if I began to speak of them, I should have to discuss at length—I leave to your intelligent conjectures.

XLIII. I come now to that golden name of Chryso- 124
gonus,[a] under which the whole association is concealed. I am at a loss, gentlemen, how to speak of this name, or how to remain silent about it. If I remain silent, I omit a most important part of my argument; if I mention it, I am afraid that not

non ille solus, id quod ad me nihil attinet, sed alii quoque plures laesos se esse putent. Tametsi ita se res habet, ut mihi in communem causam sectorum dicendum nihil magnopere videatur ; haec enim causa
125 nova profecto et singularis est. Bonorum Sex. Rosci emptor est Chrysogonus. Primum hoc videamus : eius hominis bona qua ratione venierunt aut quo modo venire potuerunt ? Atque hoc non ita quaeram, iudices, ut id dicam esse indignum, hominis innocentis bona venisse (si enim haec audaciter ac libere dicentur, non fuit tantus homo Sex. Roscius in civitate, ut de eo potissimum conqueramur) ; verum ego hoc quaero : Qui potuerunt ista ipsa lege, quae de proscriptione est, sive Valeria est sive Cornelia (non enim novi nec scio), verum ista ipsa lege bona Sex.
126 Rosci venire qui potuerunt ? Scriptum enim ita dicunt esse : UT AUT EORUM BONA VENEANT, QUI PROSCRIPTI SUNT ; quo in numero Sex. Roscius non est : AUT EORUM, QUI IN ADVERSARIORUM PRAESIDIIS OCCISI SUNT. Dum praesidia ulla fuerunt, in Sullae praesidiis fuit ; posteaquam ab armis recessimus, in summo otio rediens a cena Romae occisus est ; si lege, bona quoque lege venisse fateor ; sin autem constat contra omnes non modo veteres leges, verum

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[a] For the meaning of *sector* see note on § 93.

[b] Before other judges, who will be more inclined to listen to freely expressed complaints in regard to the proscriptions.

[c] Proposed in 82 B.C. by L. Valerius Flaccus. It gave the force of law to all Sulla's previous acts. A supplementary law (*lex Cornelia de proscriptione*) was added by Sulla when dictator, giving a legal form to the previous violent measures. An important addition was the fixing of a date when the proscription-lists and the sale of confiscated goods were to be discontinued (June 1, 81 B.C.).

[d] *Praesidium* is an armed post generally, and can be used

Chrysogonus alone—that is a matter of indifference to me—but several others may consider themselves insulted. Nevertheless, the case is of such a nature that it does not seem that I need say much against "brokers"[a] generally ; for this case is assuredly of a novel and remarkable character.

Chrysogonus bought the property of Sextus 125
Roscius. Let us first consider this question : on what justifiable grounds was it sold, or how could it have been sold ? And I will not put this question, gentlemen, in such a way as to imply that the sale of the property of an innocent citizen is scandalous. For, if such matters should find a hearing and be freely discussed,[b] it will appear that Sextus Roscius was not a man of such importance in the State that we should make a complaint about his case more than about that of anyone else. My question is this : how, by virtue of that very law dealing with proscription, the Valerian or Cornelian[c]—for I know nothing about it and do not know which it is—how, by virtue of that very law, could the property of Sextus Roscius have been sold ? For it is said that it runs as follows : 126
"that the property, either of those who have been proscribed"—of whom Sextus Roscius is not one—"or of those who have been slain within the enemy's lines[d] should be sold." As long as there were any lines, he was within those of Sulla. After we had finished fighting, during a time of perfect peace, he was slain at Rome, when returning from supper. If he was slain by virtue of the law, I admit that his property also was sold by virtue of the law ; but if it is established that he was slain contrary to all laws,

of any strong place occupied temporarily ; this explains the remark that follows, *dum praesidia ulla fuerunt.*

etiam novas occisum esse, bona quo iure aut quo modo aut qua lege venierint, quaero.

127 XLIV. In quem hoc dicam, quaeris, Eruci. Non in eum, quem vis et putas; nam Sullam et oratio mea ab initio et ipsius eximia virtus omni tempore purgavit. Ego haec omnia Chrysogonum fecisse dico, ut ementiretur, ut malum civem Sex. Roscium fuisse fingeret, ut eum apud adversarios occisum esse diceret, ut his de rebus a legatis Amerinorum doceri L. Sullam passus non sit. Denique etiam illud suspicor, omnino haec bona non venisse; id quod postea,
128 si per vos, iudices, licitum erit, aperietur. Opinor enim esse in lege, quam ad diem proscriptiones venditionesque fiant, nimirum Kalendas Iunias. Aliquot post menses et homo occisus est et bona venisse dicuntur. Profecto aut haec bona in tabulas publicas nulla redierunt, nosque ab isto nebulone facetius eludimur, quam putamus, aut, si redierunt, tabulae publicae corruptae aliqua ratione sunt; nam lege quidem bona venire non potuisse constat. Intellego me ante tempus, iudices, haec scrutari et prope modum errare, qui, cum capiti Sex. Rosci mederi debeam, reduviam curem. Non enim laborat de pecunia, non ullius rationem sui commodi ducit; facile egestatem suam se laturum putat, si hac indigna
129 suspicione et ficto crimine liberatus sit. Verum quaeso a vobis, iudices, ut haec pauca, quae restant, ita audiatis, ut partim me dicere pro me ipso putetis,

[a] See § 132.

whether new or old, I ask by what right, in what manner, or by virtue of what law were his goods sold.

XLIV. Do you ask, against whom my words are 127
directed? Not against him whom you desire and think them to be, for my own speech from the very beginning and his own eminent virtue at all times have exonerated Sulla. I assert that all this is the work of Chrysogonus—that he lied, that he pretended that Sextus Roscius was a bad citizen, that he said that he had been slain among Sulla's enemies, that he prevented Sulla being informed about these matters by the deputies from Ameria. Lastly, I even suspect that this property has not been sold at all, as I will afterwards show, gentlemen, if you allow me to do so.[a]

Now I believe that the latest date on which pro- 128
scriptions and sales may take place is stated in the law—namely, the first of June. Some months afterwards Roscius was slain and his property is said to have been sold. In any case, either this sale was not entered on the public registers, and we are being cheated by this rascal more cleverly than we think, or, if it was, the registers have been tampered with in some way, for it is evident that the property could not have been sold by virtue of the law. I am aware, gentlemen, that I am examining this question prematurely and that I am almost on the wrong road, in that while I ought to be trying to save my client's life, I am treating a whitlow. For he is not worried about money; he takes no account of his own interest; he thinks that he will easily endure his poverty, provided he is freed from this unworthy
suspicion and false accusation. But I beg, gentlemen, 129
that you will listen to the few things I have yet to say with the feeling that I am speaking partly for myself,

partim pro Sex. Roscio. Quae enim mihi ipsi indigna et intolerabilia videntur, quaeque ad omnes, nisi providemus, arbitror pertinere, ea pro me ipso ex animi mei sensu ac dolore pronuntio; quae ad huius vitam causamque pertinent, et quid hic pro se dici velit et qua condicione contentus sit, iam in extrema oratione nostra, iudices, audietis.

130 XLV. Ego haec a Chrysogono mea sponte remoto Sex. Roscio quaero, primum quare civis optimi bona venierint, deinde quare hominis eius, qui neque proscriptus[1] neque apud adversarios occisus est, bona venierint, cum in eos solos lex scripta sit, deinde quare aliquanto post eam diem venierint, quae dies in lege praefinita est, deinde cur tantulo venierint. Quae omnia si, quem ad modum solent liberti nequam et improbi facere, in patronum suum voluerit conferre, nihil egerit; nemo est enim, qui nesciat propter magnitudinem rerum multa multos partim invito,[2]
131 partim imprudente L. Sulla commisisse. Placet igitur in his rebus aliquid imprudentia praeteriri? Non placet, iudices, sed necesse est. Etenim si Iuppiter optimus maximus, cuius nutu et arbitrio caelum, terra mariaque reguntur, saepe ventis vehementioribus aut immoderatis tempestatibus aut nimio calore aut intolerabili frigore hominibus nocuit, urbes delevit, fruges perdidit, quorum nihil pernicii[3]

[1] neque proscriptus *inserted by Hotman, omitted by MSS.*
[2] *Madvig's insertion*; partim improbante *Clark.*
[3] pernicie *MSS.*: pernicii *Aulus Gellius* (ix. 14. 19).

and partly for Sextus Roscius. Things which seem to me scandalous and intolerable, and which, in my opinion, may affect us all, unless we take precautions, these I proclaim on my own account and from a feeling of indignation in my mind; things which concern the crisis of my client's life and its legal aspect, what he wishes to be said on his behalf, what conditions will satisfy him, you will hear presently, gentlemen, at the end of my speech.

XLV. I put the following questions to Chrysogonus 130
on my own account, leaving Sextus Roscius out of the question: first, why has the property of an excellent citizen been sold; next, why has the property of a man been sold who was neither one of the proscribed nor slain among Sulla's enemies—the only persons against whom the law has been drawn up; next, why has it been sold some time after the date prescribed by the law; next, why was it sold at so low a price? If, after the usual manner of worthless and wicked freedmen, he should attempt to make his patron responsible for all this, he will gain nothing by it, for everybody knows that many men have privately committed many crimes of which Sulla partly disapproved and partly was ignorant, owing to the magnitude of his undertakings. Does it seem right, 131
then, that in matters of this kind anything should be overlooked through inattention? It does not seem right, gentlemen, but it is inevitable. In fact, if Jupiter, greatest and best, whose nod and will governs heaven, earth, and seas, has often done grievous harm to men by furious winds, violent storms, excessive heat or unbearable cold, destroyed their cities and ruined their crops, we do not attribute any of these disasters to the divine will and a desire for

causa divino consilio, sed vi ipsa et magnitudine rerum factum putamus, at contra commoda, quibus utimur, lucemque, qua fruimur, spiritumque, quem ducimus, ab eo nobis dari atque impertiri videmus, quid miramur, iudices, L. Sullam, cum solus rem publicam regeret orbemque terrarum gubernaret imperiique maiestatem, quam armis receperat, legibus confirmaret, aliqua animadvertere non potuisse? nisi hoc mirum est, quod vis divina adsequi non possit, si id
132 mens humana adepta non sit. Verum ut haec missa faciam, quae iam facta sunt, ex iis, quae nunc cum maxime fiunt, nonne quivis potest intellegere omnium architectum et machinatorem unum esse Chrysogonum? qui Sex. Rosci nomen deferendum curavit, cuius honoris causa accusare se dixit Erucius . . .

[*Desunt non pauca.*]

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XLVI. . . . aptam et ratione dispositam se habere existimant, qui in Sallentinis aut in Bruttiis habent, unde vix ter in anno audire nuntium possunt.
133 Alter tibi descendit de Palatio et aedibus suis;

[a] See § 127. There is a considerable lacuna here, the purpose and some disconnected words being given by the Scholiast. The points dealt with in it by Cicero were no doubt the low price at which the property was sold (§ 130), and its disposal by Chrysogonus in various ways. His answer to this, according to the Scholiast, was: "Non quia timui, ne mihi tollerentur bona Roscii, ideo eius praedia dissipavi, sed quia aedificabam in Veientana, ideo de his transtuli," "I did not disperse the property because I was afraid that it might be taken away from me, but removed part to a house I was building in Veientine territory." Cicero, however, concluded from this dispersal that it had not been sold at all. He then went on to attack the luxury and extravagance of Chrysogonus, which made him des-

causing destruction, but to the mere force and the mighty agency of nature. But, on the other hand, the advantages of which we avail ourselves, the light which we enjoy, the air we breathe, these are favours given to us and bestowed upon us by Jupiter. Why then, gentlemen, should we be surprised, if Sulla, at the time when he alone guided the republic and swayed the world, when he was strengthening by laws the majesty of his supreme power which he had regained by force of arms, should unavoidably have allowed a few things to pass unnoticed? unless we ought rather to be surprised that human intelligence has not obtained results of which divine power is incapable.

But, leaving aside the past, anyone can understand, 132
from what is going on, especially just at the present moment, that the author and contriver of all is Chrysogonus alone, who caused Sextus Roscius to be accused and out of regard for whom Erucius declared he brought the accusation.[a]

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XLVI. . . . People who live in the territory of the Sallentini or Bruttii,[b] whence they can get news scarcely three times a year, think that they possess a country house, convenient and suitably arranged.
Here you have the other[c] coming down from his fine 133

perately in need of money. Scholiast: "in hoc capite de potentia Chrysogoni invidiam facit, ut enumeret singula deliciarum genera, quod habeat plures possessiones, mancipia, quae omnia dicit de rapinis ipsum habere."

[b] In Calabria, on the south-eastern extremity of Italy; the Bruttii inhabited its southern point.

[c] "The other," *i.e.* Chrysogonus, whose splendid house, furniture, ornaments, and large household of domestic servants and slaves he proceeds to describe.

habet animi causa rus amoenum et suburbanum, plura praeterea praedia neque tamen ullum nisi praeclarum et propinquum; domus referta vasis Corinthiis et Deliacis, in quibus est authepsa illa, quam tanto pretio nuper mercatus est, ut, qui praetereuntes praeconem enuntiare audiebant, fundum venire arbitrarentur. Quid praeterea caelati argenti, quid stragulae vestis, quid pictarum tabularum, quid signorum, quid marmoris apud illum putatis esse? Tantum scilicet, quantum e multis splendidisque familiis in turba et rapinis coacervari una in domo potuit. Familiam vero quantam et quam variis cum artificiis
134 habeat, quid ego dicam? Mitto hasce artes vulgares, cocos, pistores, lecticarios; animi et aurium causa tot homines habet, ut cotidiano cantu vocum et nervorum et tibiarum nocturnisque conviviis[1] tota vicinitas personet. In hac vita, iudices, quos sumptus cotidianos, quas effusiones fieri putatis, quae vero convivia? honesta, credo, in eius modi domo, si domus haec habenda est potius quam officina nequitiae et de-
135 versorium flagitiorum omnium. Ipse vero quem ad modum compto et delibuto capillo passim per forum volitet cum magna caterva togatorum, videtis, iudices, videtis,[2] ut omnes despiciat, ut hominem prae se neminem putet, ut se solum beatum, solum potentem

[1] conviviis *MSS.*: conviciis ("*quarrels*") *Müller*.
[2] et iam videtis, iudices *MSS.*: videtis ut *Reid-Clark*.

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[a] Of gold, silver, and copper, famous for their workmanship.
[b] Greek αὐθέψης: a utensil for boiling, resembling a tea-urn.
[c] Others read *enumerare*, to count out, pay.

house on the Palatine: he has for his enjoyment a pleasant suburban country-seat, besides a number of farms all of them excellent and near the city; a house crammed with Delian and Corinthian vessels,[a] among them that self-cooker,[b] which he recently bought at so high a price that passers-by, hearing the auctioneer crying out the bids,[c] thought that an estate was being sold. What quantities besides of embossed silver, of coverlets, pictures, statues, marble can you imagine he possesses? As much, of course, as could be heaped up in a single house, taken from many illustrious families during times of disturbance and rapine. But what am I to say about his vast household of slaves and the variety of their technical skill? I say nothing about such common 134
trades, such as those of cooks, bakers, litter-bearers: to charm his mind and ears, he has so many artists, that the whole neighbourhood rings daily with the sound of vocal music, stringed instruments, and flutes, and with the noise of banquets by night. When a man leads such a life, gentlemen, can you imagine his daily expenses, his lavish displays, his banquets? Quite respectable, I suppose, in such a house, if that can be called a house rather than a manufactory of wickedness and a lodging-house of every sort of crime. And look at the man himself, gentlemen; 135
you see how, with hair carefully arranged and reeking with perfume, he struts about all over the forum accompanied by a crowd of wearers of the toga[d]; you see what contempt he has for everyone, how he considers no one a human being compared with himself, and believes that he alone is wealthy and powerful.

[d] Citizens who disgraced their *toga* by appearing in the retinue of a freedman.

putet. Quae vero efficiat et quae conetur, si velim commemorare, vereor, iudices, ne quis imperitior existimet me causam nobilitatis victoriamque voluisse laedere; tametsi meo iure possum, si quid in hac parte mihi non placeat, vituperare; non enim vereor, ne quis alienum me animum habuisse a causa nobilitatis existimet.

136 XLVII. Sciunt ii, qui me norunt, me pro mea tenui infirmaque parte, posteaquam id, quod maxime volui, fieri non potuit, ut componeretur, id maxime defendisse, ut ii vincerent, qui vicerunt. Quis enim erat, qui non videret humilitatem cum dignitate de amplitudine contendere? quo in certamine perditi civis erat non se ad eos iungere, quibus incolumibus et domi dignitas et foris auctoritas retineretur. Quae perfecta esse et suum cuique honorem et gradum redditum gaudeo, iudices, vehementerque laetor eaque omnia deorum voluntate, studio populi Romani, consilio et imperio et felicitate L. Sullae
137 gesta esse intellego. Quod animadversum est in eos, qui contra omni ratione pugnarunt, non debeo reprehendere; quod viris fortibus, quorum opera eximia in rebus gerendis exstitit, honos habitus est, laudo. Quae ut fierent, idcirco pugnatum esse arbitror meque in eo studio partium fuisse confiteor. Sin autem id actum est et idcirco arma sumpta sunt, ut homines postremi pecuniis alienis locupletarentur et in fortunas unius cuiusque impetum facerent, et

[a] With reference not only to a man's birth, but also to his moral worth.

If I were inclined to mention all that he does and attempts to do, I am afraid, gentlemen, that some less well-informed person may think that I wanted to attack the cause of the nobility and their victory; although I am within my rights, should anything displease me in that party, in attacking it; for I have no fear of anyone thinking that my feelings have ever been unfriendly to the cause of the nobility.

XLVII. Those who know me are aware that, to the 136
best of my poor and feeble abilities, the moment their mutual agreement, which I desired above all, became impossible, I earnestly strove to secure the victory for those who have won it. For was there anyone who could not see that men of low birth were contending with men of rank[a] for the possession of the highest honours? In such a contest it would have been the act of a degenerate citizen not to join those whose safety assured the dignity of the state at home and its authority abroad. I am glad, gentlemen, and highly delighted that this has been accomplished, that each has been rewarded and his rank restored; and I am aware that all these results are due to the will of the gods, the zeal of the Roman people, the wisdom, supreme power, and good fortune of Sulla.
I ought not to find fault with punishment having been 137
inflicted on those who fought against us in every way they could; I approve of the rewarding of those brave men who displayed special zeal in the conduct of affairs. I am of opinion that the object of the struggle was that these results should be attained, and I confess that I was devoted to that party. But if the object was that, if arms were taken up, the lowest of people might be enriched by the wealth of others and might be able to make an inroad on every-

id non modo re prohibere non licet, sed ne verbis quidem vituperare, tum vero isto bello non recreatus neque restitutus, sed subactus oppressusque populus
138 Romanus est. Verum longe aliter est; nihil horum est, iudices. Non modo non laedetur causa nobilitatis, si istis hominibus resistetis, verum etiam ornabitur. XLVIII. Etenim qui haec vituperare volunt, Chrysogonum tantum posse queruntur; qui laudare volunt, concessum ei non esse commemorant. Ac iam nihil est, quod quisquam aut tam stultus aut tam improbus sit, qui dicat: "Vellem quidem liceret; hoc dixissem." Dicas licet. "Hoc fecissem." Facias licet; nemo prohibet. "Hoc decrevissem." Decerne, modo recte; omnes adprobabunt. "Hoc iudicassem." Laudabunt omnes, si recte et ordine iudicaris.
139 Dum necesse erat resque ipsa cogebat, unus omnia poterat; qui posteaquam magistratus creavit legesque constituit, sua cuique procuratio auctoritasque est restituta. Quam si retinere volunt ii, qui reciperarunt, in perpetuum poterunt obtinere; sin has caedes et rapinas et hos tantos tamque profusos sumptus aut facient aut approbabunt—nolo in eos gravius quicquam ne ominis quidem causa dicere, unum hoc dico: nostri isti nobiles nisi vigilantes et boni et fortes et misericordes erunt, iis hominibus, in quibus

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[a] As a senator. [b] As a *iudex*.

[c] Throughout this passage Cicero endeavours to attack Chrysogonus without appearing to attack Sulla and the aristocratic party: see Introduction, p. 119.

one's property; if it is not only unlawful to prevent this by action, but even to utter a word of censure, then indeed, instead of the Roman people being remade and re-established, this war has merely subdued and crushed it. But it is quite otherwise, gentlemen; 138
nothing of the kind has taken place; not only will no harm be done to the cause of the nobles by your resisting such people, but, on the contrary, it will gain additional lustre.

XLVIII. In fact, those who are inclined to find fault with the present state of things complain of the excessive power of Chrysogonus; those who are inclined to praise it declare that no such power has been granted to him. There is no reason why anyone should be so foolish or dishonest as to say: "I could wish it were allowed; I would have said this." You may say it. "I would have done this." You may do it; no one prevents you. "I should have decreed this."[a] Decree it, provide you decree rightly; everyone will approve. "I should have judged thus."[b] Everyone will praise you, if you judge rightly and in due form. While it was necessary and 139
the state of affairs demanded, one man alone possessed all power; but after he created magistrates and established laws, everyone's sphere of duty and authority was restored to him. Those who have recovered it, if they desire to retain it, will be able to hold it in perpetuity; but if they commit or approve of such acts of murder and rapine, of so great and lavish expenses—I do not wish to say anything too harsh against them, anything that might even seem inauspicious.[c] I merely say this: this nobility of ours, unless they show themselves watchful, kindly, brave, and merciful, will have to resign their distinctions to

haec erunt, ornamenta sua concedant necesse est.
140 Quapropter desinant aliquando dicere male aliquem locutum esse, si qui vere ac libere locutus sit, desinant suam causam cum Chrysogono communicare, desinant, si ille laesus sit, de se aliquid detractum arbitrari, videant, ne turpe miserumque sit eos, qui equestrem splendorem pati non potuerunt, servi nequissimi dominationem ferre posse. Quae quidem dominatio, iudices, in aliis rebus antea versabatur, nunc vero quam viam munitet et quo iter adfectet, videtis, ad fidem, ad ius iurandum, ad iudicia vestra, ad id, quod solum prope in civitate sincerum sanctumque restat.
141 Hicne etiam sese putat aliquid posse Chrysogonus? hic etiam potens esse vult? O rem miseram atque acerbam! Neque mehercules hoc indigne fero, quod verear, ne quid possit, verum quod ausus est, quod speravit sese apud tales viros aliquid posse ad perniciem innocentis, id ipsum queror. XLIX. Idcircone experrecta[1] nobilitas armis atque ferro rem publicam reciperavit, ut ad libidinem suam liberti servolique nobilium bona fortunasque nostras vexare possent?
142 Si id actum est, fateor me errasse, qui hoc maluerim, fateor insanisse, qui cum illis senserim; tametsi

[1] *The* MS. *reading* expectata *would mean "as it was wished and expected to do," or "long waited for" (to take action)*: experrecta *is the Junta reading*: *Ammon suggests* excitata.

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[a] *Equestrem splendorem.* This refers especially to the *lex iudiciaria* of Gaius Gracchus, whereby the office of *iudices* was transferred from the senators to the knights. This led to great jealousy between the two orders. In the civil war the knights were chiefly on the side of Marius, and hence were severely punished by Sulla.

those who possess these qualities. Wherefore let 140 them at last cease from saying that a man who has spoken with truth and frankness has spoken treasonably; let them cease from making common cause with Chrysogonus; let them cease from thinking that, if he is injured, they themselves have suffered any loss; let them consider whether it is not disgraceful and miserable that they, who could not suffer the splendour of the equestrian order,[a] should be able to endure the domination of the basest of slaves. This domination, gentlemen, was formerly employed on other matters,[b] but now you see what road it is constructing, what course it is entering upon: it is aiming at your loyalty, your oath, your verdicts, at almost the only thing that is left in the State uncorrupted and inviolable. Does Chrysogonus think 141 that even in this he possesses some influence? does he wish to be powerful even in this? How miserable! how cruel! Yet, by Hercules, I am not indignant because I am afraid of his having any power, but the fact that he showed such audacity, that he entertained the hope that with men such as these he could have sufficient influence to cause the ruin of an innocent man, that is just what I complain of.

XLIX. Did the nobility, then, at length aroused, recover the government by force of arms and the sword, only in order that freedmen and worthless slaves of the nobles might be able to attack our property and fortunes? If this was their object, I confess 142 that I made a mistake in preferring their victory; I confess that I lost my head in agreeing with their opinions, although I did so without taking part in

[b] Such as the proscriptions and the purchase of confiscated goods.

inermis, iudices, sensi. Sin autem victoria nobilium ornamento atque emolumento rei publicae populoque Romano debet esse, tum vero optimo et nobilissimo cuique meam orationem gratissimam esse oportet. Quodsi quis est, qui et se et causam laedi putet, cum Chrysogonus vituperetur, is causam ignorat, se ipsum probe novit; causa enim splendidior fiet, si nequissimo cuique resistetur, ille improbissimus Chrysogoni fautor, qui sibi cum illo rationem communicatam putat, cum laeditur, ab hoc splendore causae separatur.

143 Verum haec omnis oratio, ut iam ante dixi, mea est, qua me uti res publica et dolor meus et istorum iniuria coëgit; Sex. Roscius horum nihil indignum putat, neminem accusat, nihil de suo patrimonio queritur; putat homo imperitus morum, agricola et rusticus, ista omnia, quae vos per Sullam gesta esse dicitis, more, lege, iure gentium facta; culpa liberatus et crimine nefario solutus cupit a vobis discedere;
144 si hac indigna suspicione careat, animo aequo se carere suis omnibus commodis dicit; rogat oratque te, Chrysogone, si nihil de patris fortunis amplissimis in suam rem convertit, si nulla in re te fraudavit, si tibi optima fide sua omnia concessit, adnumeravit,

[a] Anyone who considers blame of Chrysogonus to be an attack upon himself and the cause of the nobles, does not understand the cause, but knows his own bad position; at the moment when he feels insulted if Chrysogonus is attacked he severs himself from the party of the nobles.

[b] *Ius gentium*: according to the Roman jurists, the principles of right and wrong recognized in the laws of all peoples, the law common to all nations, not the same as international law.

the fight. But if the victory of the nobles is to be a glory and advantage to the republic and the Roman people, then indeed my speech ought to be most welcome to all the best and noblest of the citizens. But if there be anyone who thinks that both he himself and the cause suffer injury when Chrysogonus is attacked, he does not understand the cause, but forms a good estimate of his own position[a]: for the cause will be rendered more glorious, if it shall offer resistance to every scoundrel, but the shameless supporter of Chrysogonus, who thinks that between him and Chrysogonus there is a close fellowship of interest, does suffer injury, for he is cut off from any share of the glory of the cause.

But, I repeat, all that I have just said has been said 143
in my own name; it is the condition of the republic, my indignation, and the injustice of those men that have forced me to speak as I have done. Sextus Roscius feels no indignation at any of these acts of injustice, he accuses no one, he makes no complaint about the loss of his inheritance. Inexperienced in the ways of the world, this husbandman and rustic believes that all that you assert was the act of Sulla was done in accordance with law, custom, and the law of nations[b]; his desire is, to leave this tribunal free from all blame and acquitted of this nefarious accusation; if he is delivered from this unworthy 144
suspicion, he declares that he is resigned to the loss of all his property. He begs and prays you, Chrysogonus, if out of his father's ample fortune he has converted nothing to his own advantage, if he has defrauded you in nothing, if he has given over to you all his property with the utmost good faith, has counted and weighed each item separately, if he has

adpendit, si vestitum, quo ipse tectus erat, anulumque de digito suum tibi tradidit, si ex omnibus rebus se ipsum nudum neque praeterea quicquam excepit, ut sibi per te liceat innocenti amicorum opibus vitam
145 in egestate degere. L. Praedia mea tu possides, ego aliena misericordia vivo; concedo, et quod animus aequus est, et quia necesse est. Mea domus tibi patet, mihi clausa est; fero. Familia mea maxima tu uteris, ego servum habeo nullum; patior et ferendum puto. Quid vis amplius? quid insequeris, quid oppugnas? qua in re tuam voluntatem laedi a me putas? ubi tuis commodis officio? quid tibi obsto? Si spoliorum causa vis hominem occidere, spoliasti; quid quaeris amplius? si inimicitiarum, quae sunt tibi inimicitiae cum eo, cuius ante praedia possedisti, quam ipsum cognovisti? si metus, ab eone aliquid metuis, quem vides ipsum ab se tam atrocem iniuriam propulsare non posse? sin, quod bona, quae Sex. Rosci fuerunt, tua facta sunt, idcirco hunc illius filium studes perdere, nonne ostendis id te vereri, quod praeter ceteros tu metuere non debeas, ne quando liberis proscriptorum bona patria reddantur?
146 Facis iniuriam, Chrysogone, si maiorem spem emptionis tuae in huius exitio ponis quam in iis rebus, quas L. Sulla gessit. Quodsi tibi causa nulla est, cur hunc miserum tanta calamitate adfici velis, si tibi

[a] The seal-ring worn by every free Roman.
[b] There is no fear of Sulla depriving you of it, seeing that you are his favourite, and also provision was made against it.

delivered to you the very clothes which covered him and the ring [a] from his finger, if, of all his belongings he has only reserved his naked body and nothing else—he begs and prays you to allow an innocent man to pass his life in indigence, with the assistance of his friends.

L. You possess my farms; I am living on the 145
charity of others; I yield, because I am resigned and because I must. My house is open to you, but shut to me; I bear it. You have at your disposal my numerous household; I have not a single slave; I suffer it and think that it can be endured. What more do you want? why pursue me? why attack me? in what do you think I have thwarted your desires? in what have I opposed your interests? in what have I stood in your way? If you wish to murder a man for the sake of the spoils, you have already despoiled him; what more do you ask for? If it is from enmity, what enmity can exist between you and one whose farms you took possession of before you knew the man himself? If it is from fear, can you have anything to fear from one whom you see to be incapable of warding off so atrocious an injustice by himself? But if it is because the property which belonged to Sextus Roscius has become yours that you are eager to destroy his son, do you not make it plain that you are afraid of that of which you of all men [b] should have the least reason to be afraid—lest sometime or other their father's property may be restored to the children of the proscribed?

You do wrong, Chrysogonus, if you place greater 146
hope of preserving your purchase in the death of my client than in what Sulla has achieved. But if you have no reason for wishing this unhappy man to be

omnia sua praeter animam tradidit nec sibi quicquam
paternum ne monumenti quidem causa clam reser-
vavit, per deos immortales, quae ista tanta crudelitas
est, quae tam fera immanisque natura? Quis um-
quam praedo fuit tam nefarius, quis pirata tam bar-
barus, ut, cum integram praedam sine sanguine
147 habere posset, cruenta spolia detrahere mallet? Scis
hunc nihil habere, nihil audere, nihil posse, nihil
umquam contra rem tuam cogitasse, et tamen op-
pugnas eum, quem neque metuere potes neque odisse
debes nec quicquam iam habere reliqui vides, quod
ei detrahere possis; nisi hoc indignum putas, quod
vestitum sedere in iudicio vides, quem tu e patrimonio
tamquam e naufragio nudum expulisti. Quasi vero
nescias hunc et ali et vestiri a Caecilia, [Balearici
filia, Nepotis sorore], spectatissima femina, quae cum
patrem clarissimum, amplissimos patruos, ornatissi-
mum fratrem haberet, tamen, cum esset mulier, vir-
tute perfecit, ut, quanto honore ipsa ex illorum dig-
nitate adficeretur, non minora illis ornamenta ex sua
laude redderet.

148 LI. An, quod diligenter defenditur, id tibi in-
dignum facinus videtur? Mihi crede, si pro patris
huius hospitiis et gratia vellent omnes huic hospites
adesse et auderent libere defendere, satis copiose

[a] She was the daughter of Q. Caecilius Metellus, who obtained the name of Balearicus from his conquest of the Balearic Islands during his consulship in 123; of her uncles, Marcus suppressed a revolt of the Sardinians and Gaius defeated the Thracians. Her brother was Q. Caecilius Metellus Nepos, who was consul in 98. The MSS. vary as to her name. In § 27 she is described as "Nepotis filiam," here as "Balearici filia, Nepotis soror." But since there is little doubt that she was the daughter of Metellus Balearicus, the text has been altered to correspond.

[b] *Mulier* and *virtute* are purposely contrasted: the

afflicted by so great a calamity, if he has handed over
to you everything except the breath in his body, if he
has not secretly kept back anything that belonged to
his father even as a memento of him, by the immortal
gods! what is the meaning of this monstrous cruelty,
this savage inhumanity of character? Was ever
robber so criminal, was ever pirate so barbarous, as
to prefer to strip off spoils dripping with blood when
he could have the entire booty without bloodshed?
You know that my client possesses nothing, that he 147
dares do nothing, can do nothing, that he has never
intended anything against your interests; and yet
you attack him whom you cannot fear and ought not
to hate, who you see has nothing left of which you
can rob him; unless you think it scandalous to see him
wearing his clothes and sitting in this court—the man
whom you have driven out of his patrimony as naked
as if he had suffered shipwreck. As if you did not
know that his food and clothing are supplied by
Caecilia,[a] the daughter of Balearicus, the sister of
Nepos, a woman highly esteemed, who, although
she had a most illustrious father, most distinguished
uncles, and a most eminent brother, has yet, woman
though she is, displayed such worth[b] that, great as
is the honour which she herself derives from their
eminence, she in her turn confers on them no lesser
dignity through her own merits.

LI. Or does it seem to you scandalous that he is 148
zealously defended? Believe me, if, in consideration
of the ties of hospitality and friendship which attached
them to his father, all his friends were willing to be
present and dared to defend him openly, he would

etymology of the latter (*vir*, a man) is to be considered in reference to the sentence *cum esset mulier*.

defenderetur; sin autem pro magnitudine iniuriae proque eo, quod summa res publica in huius periculo temptatur, haec omnes vindicarent, consistere mehercule vobis isto in loco non liceret. Nunc ita defenditur, non sane ut moleste ferre adversarii debeant, neque
149 ut se potentia superari putent. Quae domi gerenda sunt, ea per Caeciliam transiguntur, fori iudiciique rationem *M.* Messalla, ut videtis, iudices, suscepit; qui si iam satis aetatis ac roboris haberet, ipse pro Sex. Roscio diceret; quoniam ad dicendum impedimento est aetas et pudor, qui ornat aetatem, causam mihi tradidit, quem sua causa cupere ac debere intellegebat, ipse assiduitate, consilio, auctoritate, diligentia perfecit, ut Sex. Rosci vita erepta de manibus sectorum sententiis iudicum permitteretur. Nimirum, iudices, pro hac nobilitate pars maxima civitatis in armis fuit; haec acta res est, ut ii nobiles restituerentur in civitatem, qui hoc facerent, quod facere Messallam videtis, qui caput innocentis defenderent, qui iniuriae resisterent, qui, quantum possent, in salute alterius quam in exitio mallent ostendere; quod si omnes, qui eodem loco nati sunt, facerent, et res publica ex illis et ipsi ex invidia minus laborarent.

[a] It is uncertain who this Messalla was: either the consul in 61 B.C., or in 53, who was now about sixteen years old.

have enough defenders and to spare; but if, in consideration of the greatness of the injustice, and of the fact that the highest interests of the State are being attacked in the peril by which he is threatened—if all were to punish these acts, by Hercules! you would not be allowed to stand where you are. As it is, the conditions under which he is now defended are certainly not such as ought to annoy our opponents, or make them think that they are being defeated by
superior power. As for his domestic affairs, they 149
are looked after by Caecilia; the conduct of his affairs in the forum and in court, as you see, gentlemen, has been undertaken by Messalla.[a] If he were old and strong enough, he would plead himself for Sextus Roscius; but since his youth and his modesty, which is an ornament to it, prevent him from speaking, he has entrusted the cause to me, who he knew desired and was under an obligation to undertake it in his interest. Personally, by his constant presence in court, his advice, influence, and unwearied attention, he succeeded in rescuing the life of Sextus Roscius from the hands of the brokers and getting it left to the verdict of his judges. There can be no doubt, gentlemen, that most of the citizens took up arms for such nobles as Messalla; their object was that these nobles should be restored to their rights as citizens who were ready to do what you see Messalla doing—defend the civil existence of an innocent man, resist injustice, and show the extent of their power in saving rather than ruining their fellow-men. If all those who have been born in the same rank were to do this, the State would have less to suffer from them, and they themselves would suffer less from the jealousy with which they are regarded.

150 LII. Verum si a Chrysogono, iudices, non impetramus, ut pecunia nostra contentus sit, vitam ne petat, si ille adduci non potest, ut, cum ademerit nobis omnia, quae nostra erant propria, ne lucem quoque hanc, quae communis est, eripere cupiat, si non satis habet avaritiam suam pecunia explere, nisi etiam crudelitati sanguis praebitus sit, unum perfugium, iudices, una spes reliqua est Sex. Roscio, eadem quae rei publicae, vestra pristina bonitas et misericordia. Quae si manet, salvi etiam nunc esse possumus; sin ea crudelitas, quae hoc tempore in re publica versata est, vestros quoque animos (id quod fieri profecto non potest) duriores acerbioresque reddidit, actum est, iudices; inter feras satius est aetatem degere quam in hac tanta immanitate versari.
151 Ad eamne rem vos reservati estis, ad eamne rem delecti, ut eos condemnaretis, quos sectores ac sicarii iugulare non potuissent? Solent hoc boni imperatores facere, cum proelium committunt, ut in eo loco, quo fugam hostium fore arbitrentur, milites collocent, in quos, si qui ex acie fugerint, de improviso incidant. Nimirum similiter arbitrantur isti bonorum emptores vos hic, tales viros, sedere, qui excipiatis eos, qui de suis manibus effugerint. Di prohibeant, iudices, ne hoc, quod maiores consilium publicum vocari volue-
152 runt, praesidium sectorum existimetur! An vero, iudices, vos non intellegitis nihil aliud agi, nisi ut proscriptorum liberi quavis ratione tollantur, et eius

[a] *Consilium publicum*: the name commonly applied to the senate, here also to the assembly of *iudices* summoned by a public official, the praetor.

LII. But, gentlemen, if we cannot persuade 150
Chrysogonus to be content with our money and not to aim at our life; if, after having taken away everything that belonged to us, he cannot be induced to abstain from robbing us even of the light of day which is common to all the world; if he does not consider it enough to glut his avarice with money, unless blood be provided to assuage his brutality; then, gentlemen, the only refuge, the only hope that is left for Sextus Roscius is the same that is left for the republic—the kindheartedness and compassion which you showed in earlier times. If these feelings abide, we can even now be saved. But if that barbarity, which in these times is rife in the State, hardens and embitters your hearts—which assuredly cannot be the case—then, gentlemen, it is all over; it would be better to spend one's life among wild beasts than in
the midst of such frightful monsters. Is it for this 151
that you have been reserved, is it for this that you have been chosen as judges, that you might condemn those whom cut-throats and assassins have not been able to murder? Good generals, when they join battle, are accustomed to post soldiers at the spot to which they think the enemy will retreat, that they may make a sudden attack upon any who may flee from the field. No doubt these purchasers of confiscated goods think that in the same manner men like you are sitting here to catch those who have escaped their hands. Heaven forbid, gentlemen, that this which our ancestors willed should be called the public council,[a] should be thought to be a safeguard for
brokers! Do you not really understand, gentlemen, 152
that the only aim of these proceedings is that the children of the proscribed should be removed by

rei initium in vestro iure iurando atque in Sex. Rosci periculo quaeri? Dubiumne est, ad quem maleficium pertineat, cum videatis ex altera parte sectorem, inimicum, sicarium eundemque accusatorem hoc tempore, ex altera parte egentem, probatum suis filium, in quo non modo culpa nulla, sed ne suspicio quidem potuit consistere? Numquid hic aliud videtis obstare Sex. Roscio, nisi quod patris bona venierunt?

153 LIII. Quodsi id vos suscipitis et ad eam rem operam vestram profitemini, si idcirco sedetis, ut ad vos adducantur eorum liberi, quorum bona venierunt, cavete, per deos immortales, iudices, ne nova et multo crudelior per vos proscriptio instaurata esse videatur. Illam priorem, quae facta est in eos, qui arma capere potuerunt, tamen senatus suscipere noluit, ne quid acrius, quam more maiorum comparatum est, publico consilio factum videretur, hanc vero, quae ad eorum liberos atque ad infantium puerorum incunabula pertinet, nisi hoc iudicio a vobis reicitis et aspernamini, videte, per deos immortales, quem in locum rem publicam perventuram putetis!

154 Homines sapientes et ista auctoritate et potestate praeditos, qua vos estis, ex quibus rebus maxime res publica laborat, iis maxime mederi convenit. Vestrum nemo est, quin intellegat populum Romanum, qui quondam in hostes lenissimus existimabatur, hoc

means fair or foul, and that the first step in this is being sought for in the case of your verdict and the peril of Sextus Roscius? Is there any doubt who is responsible for the crime, when you see on the one side a broker, an enemy, an assassin, and at the same time our accuser, on the other, reduced to poverty, a son esteemed by his friends and relatives, to whom not only no culpability, but not even a shadow of suspicion can be attached? Do you see anything else in these circumstances that goes against Roscius, except that his father's property has been sold?

LIII. But if you support that cause and proffer 153
your assistance to ensure its success; if you are sitting here in order that the children of those whose goods have been sold may be brought before you, by the immortal gods! gentlemen, take care lest you seem to have inaugurated a new and far more cruel proscription. The first was directed against those who were able to take up arms; none the less the senate refused to support it, for fear that an act more severe than what was ordained by our ancestors might appear to have the approval of the public council. The second concerns the children and infants of the proscribed in the cradle, and unless you reject it with contempt by your verdict in this trial, by the immortal gods! consider, gentlemen, to what a state you think the republic may be brought.

It behoves wise men, furnished with the authority 154
and power which you possess, to apply the most effective remedies to the evils from which the republic especially suffers. There is no one among you who does not know that the Roman people, who were formerly considered to be most lenient towards their

tempore domestica crudelitate laborare. Hanc tollite ex civitate, iudices, hanc pati nolite diutius in hac republica versari; quae non modo id habet in se mali, quod tot cives atrocissime sustulit, verum etiam hominibus lenissimis ademit misericordiam consuetudine incommodorum. Nam cum omnibus horis aliquid atrociter fieri videmus aut audimus, etiam qui natura mitissimi sumus, assiduitate molestiarum sensum omnem humanitatis ex animis amittimus.

enemies, is suffering to-day from cruelty towards its own citizens. Banish this cruelty from the State, gentlemen; do not allow it to stalk abroad any longer in this republic; for it not only involves this evil, that it has removed so many citizens by a most atrocious death, but it has also stifled all feeling of pity in the hearts of men generally most merciful, by familiarizing them with all kinds of evils. For when, every hour, we see or hear of an act of cruelty, even those of us who are by nature most merciful lose from our hearts, in this constant presence of trouble, all feeling of humanity.

THE SPEECH IN DEFENCE OF QUINTUS ROSCIUS THE COMEDIAN

INTRODUCTION

A CERTAIN Gaius Fannius Chaerea had a slave Panurgus, of whom he was the sole owner, but, struck by his ability, he entered into a partnership with the famous actor Quintus Roscius. It was agreed that the slave should be their common property, that Roscius should train him for the stage, and that they should share the profits of his labours in instructing him. The slave's natural talents and Roscius's training and popularity led to rapid success, but a promising career was soon brought to an end by the death of Panurgus, who was murdered by a certain Quintus Flavius of Tarquinii under circumstances unknown. An action for damages for the value of Panurgus was then begun by Roscius against Flavius, in which Fannius acted as Roscius's *cognitor* (agent). But before the trial actually came on, Roscius came to a settlement (*decisio*) with Flavius to accept a farm, which, later on, under his good management became valuable, and now Fannius claims that half the value of the farm belongs to him, on the ground that the settlement was made *on behalf of the partnership* and not on account of Roscius only. This is the main issue; but a great number of highly complex points (many of them almost incapable of clear explanation) are raised in the speech, and it seems best to give a summary of its separate sections.

INTRODUCTION

Summary of the Speech

§§ 1-9. Fannius has already argued that he has a formal entry in his account-books (*tabulae*) of Roscius's debt to him, and the making of such an entry (*expensam ferre pecuniam*) was apparently considered good evidence. The mutilated speech opens with the suggestion that this plea is not valid in the case of a rogue like Fannius. Then, too, he has no such "account-books" to produce, only certain loose notes or note-books (*adversaria*), on the worthlessness of which Cicero comments at length.

§§ 10-13. The case has already been before an *arbiter* (the same C. Piso who is now sitting as *iudex*), who, apparently, settled what the amount of the claim should be (*quantum aequius et melius sit dari*). The matter would then come before a *iudex*, who would determine whether or not this sum, in this case 50,000 sesterces, should be paid or not (*si paret* HS IↃↃ *dari*). The sum was fixed (*certa pecunia*), and the judge could only decide "yes" or "no." But Fannius was pressing the *iudex* to deal with the amount and so was legally wrong, while it was also clear that he had no real proof of what the actual debt was.

[The whole of this is, however, very obscure.]

§§ 14-24. As Fannius does not say that the money was lent (*adnumerata*), as he has not proved it was *expensa*, it only remains for him to show that there was a verbal agreement made before witnesses (*stipulatio*) and he has no witnesses. And so the case is in a way complete; but Cicero wishes to go further and asks what this means. Is it money due to him under the partnership of which Roscius is defrauding him? If

so, it is one of the gravest of charges, and in fact incredible, if anyone will consider the position and character of Roscius, on which Cicero dwells at length, especially pointing out (§§ 22, 23) the absurdity of supposing that a man of his wealth would commit fraud for a mere 50,000 sesterces.

§§ 25, 26. If the action concerned a partnership, it ought to have been brought before an *arbiter pro socio*, " an arbitrator to deal with partnership questions." There was a well-known formula for securing the appointment of such an *arbiter*, but Fannius did not employ it, and will now make certain fictitious excuses about some agreement or other between him and Roscius.

[Owing to the uncertainty of the text or to Cicero's deliberately confusing the issue, § 26 is very obscure.]

§§ 27-31. As to the value of Panurgus, on which the sum claimed is based, it was entirely due to the training which he had received from Roscius.

[On this Cicero dilates in order to depreciate the damages and as affording a good subject for eloquence.]

§§ 32-34. After Panurgus had been murdered, Roscius brought a suit against Flavius and appointed Fannius to act as his *cognitor* or " agent " in the matter, but subsequently Roscius " settled " privately with Flavius, receiving from him a farm, the present value, however, of which is not only exaggerated, but also largely due to Roscius's good management.

§§ 35-39. But the real issue is : Was this settlement made by Roscius on his own separate account or on account of the partnership ?

The first argument is that if it had been on account of the partnership, Flavius, who knew that Panurgus

was joint partner, would have demanded the usual guarantee in a settlement on behalf of partners, "that no one should make any further claim" (*neminem amplius petiturum*). But Flavius did not do so.

Next, although Roscius's settlement with Flavius was fifteen years ago, in which Piso as arbitrator asked (*rogavit*) Roscius to pay Fannius 100,000 sesterces for his services in the original action, Fannius had expressly promised to pay Roscius "half of any sum I shall get from Flavius," thus demonstrating that he considered his own claim on Flavius to be still unsettled.

§§ 40-50. Cicero then goes on to show that Fannius did actually claim and receive 100,000 sesterces from Flavius, the case having been decided by a certain Cluvius as judge. As to the fact, Flavius being dead, he will produce the evidence of Cluvius, or rather the evidence of two Roman senators, to whom Cluvius had given a full account of the matter, and Cluvius could have had no reason to give his friends a false account. Or are we to suppose that he was bribed by Roscius to do so?

[Unless Cluvius was dead, it is not clear why he did not give evidence; and the rhetorical manner in which Cicero deals with his case here seems to suggest that he feels its weakness.]

§ 51. It is argued that, even if Roscius had sued Flavius in his own name, he ought to have paid whatever he got to the partnership. But obviously what he claimed for himself and had a right to claim for himself, he had a right to keep for himself.

The mutilated character of the speech makes it almost impossible to gather what were the exact

facts, nor does Cicero's manner of presenting them help. Indeed, it seems as if he deliberately evades direct statements, and seeks every opportunity for eloquent digression (such as the comparison of the characters of Roscius and Fannius). Indeed, Roscius's appointing Fannius his agent in the original action against Flavius and then going behind his back to make a private settlement, is a fact that needs much explanation, and Cicero's endeavour to prove that the second-hand evidence of Cluvius is really more trustworthy because it is second-hand is scarcely convincing. Moreover, the absence of any clear statement as to dates or as to what the proceedings before Piso as *arbiter* actually were make perplexity greater, while many of the references to Roman law are in themselves obscure and many of the figures as given in the MSS. extremely doubtful.

At the same time it should be carefully borne in mind that the speech was addressed to C. Piso as *iudex* who had already, when sitting as *arbiter*, become acquainted with the facts of the case, a knowledge of which Cicero may therefore justly assume and make references which to us must remain obscure.

In the circumstances it has seemed best to give some summary of the various divisions of the speech and to indicate its chief points, some of which are fairly clear.

INTRODUCTION

Numerals

(From Kennedy's *Public School Latin Grammar*)

IↃ = 500, which is multiplied by 10 as often as Ↄ is added ; thus, IↃↃ = 5000, IↃↃↃ = 50,000.

As often as the symbol C is prefixed to I, equalling the number of suffixed C, the total is doubled : thus,

CIↃ = twice 500 = 1000
CCIↃↃ = twice 5000 = 10,000
CCCIↃↃↃ = twice 50,000 = 100,000

Further remarks on the numerals will be found in the Notes.

Date of the Speech

The date is variously given as 76, 68, 66. The chief passages in the speech bearing on this are in § 33 and § 37. In § 33 there is an allusion to the low price of land when Roscius made his agreement with Flavius and the uncertainty felt by many in regard to their holdings. Incidentally, the farm was in a bad condition, and it must have taken Roscius a long time to improve it so much that he greatly enhanced its value. According to what Fannius said, it was later worth 100,000 sesterces, or even more. In § 37 it is said that this critical period was *fifteen* years before the present speech was delivered.

Some authorities refer this state of things to the time of the Social War (91–88), according to which the date would fall between 76–73. But this would mean that a Roman *eques*, named Cluvius, acted as *iudex* in the case of Fannius against Flavius to recover

damages for the loss of Panurgus, a duty which he could not have performed during the period 81–70 when the *equites* were disqualified. Nor does Cicero's account of the general unrest and financial depression tally with what is known of the general conditions during the Social War.

It is now generally agreed that the passage in § 33 refers to the time of Sulla's proscriptions and confiscations and the devastation of Etruria (82–81), especially when it is remembered that Flavius was a native of Etruria, where the farm accepted from Flavius by Roscius was probably situated. The state of things also corresponds to the account of political conditions frequently alluded to in *Pro Roscio Amerino*. If 81 be accepted, fifteen years gives 66 as the date of the speech, 69 as the date of the *compromissum* entered into before Piso between Fannius and Roscius, soon afterwards followed by the suit between Fannius and Flavius, with Cluvius as *iudex* after the *equites* had been restored to their former privileges by the lex Aurelia (70). It may be noted, however, that some consider that Sulla's regulations in this respect did not affect private as well as criminal cases.

Hotman's alteration of xv. to iv. is no doubt due to his feeling that the case against Flavius could not have been left undecided for so many years, and that Roscius's settlement with Flavius could not have preceded the compromise with Fannius by so long an interval. But the alteration does not fit in with *re vetere* (§ 38) and *decisionem veterem* (§ 39) contrasted with *repromissionem recentem* (§ 41), *nova restipulatio* and *nunc* (§ 38) with *iam pridem*. [An argument, however, in favour of the earlier date is *mea adulescentia* (§ 44), which Cicero would hardly apply to himself

when he was over forty years of age. Landgraf also thinks that the style resembles his earlier rather than his later works.]

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PRO Q. ROSCIO COMOEDO ORATIO

MULTA DESUNT

1 I. . . . MALITIAM naturae crederetur. Is scilicet vir optimus et singulari fide praeditus in suo iudicio suis tabulis testibus uti conatur. Solent fere dicere, qui per tabulas hominis honesti[1] pecuniam expensam tulerunt: "Egone talem virum corrumpere potui, ut mea causa falsum in codicem referret?" Expecto, quam mox Chaerea hac oratione utatur: "Egone hanc manum plenam perfidiae et hos digitos meos impellere potui, ut falsum perscriberent nomen?" Quodsi ille suas proferet tabulas, proferet suas quoque Roscius. Erit in illius tabulis hoc nomen, at
2 in[2] huius non erit. Cur potius illius quam huius credetur?—Scripsisset ille, si non iussu huius expensum

[1] homines . . . citi *MSS.*; *the correction in the text is due to Manutius.*
[2] in *inserted by Sylvius.*

[a] The beginning of the first part and the end of the second part of this speech are lost. The words *malitiam naturae crederetur* are taken to mean: how could a man, naturally so wicked, be believed?

[b] *Expensum* or *expensam pecuniam ferre* was the phrase for making an entry of money due with the debtor's name; *acceptum referre* for an entry of money received. Strictly speaking, a "literal" contract (*obligatio litteris*) to be valid, should be made by entry in the account-books of both

IN DEFENCE OF QUINTUS ROSCIUS THE COMEDIAN

I.[a] . . . As one of the best of men, no doubt, and of 1
singular integrity, he attempts to use his own account-books as evidence in his own cause. Those who desire to prove the payment of a sum of money [b] by the account-books of an honourable man are in the habit of saying: "Should I have been able to corrupt such a man so as to persuade him to make a false entry in his ledger to oblige me?" I am waiting to see how long it will be before Chaerea uses the following language: "Should I have been able to induce this hand, full of treachery, and these fingers of mine to make a false entry [c] of a debt?" But if he produces his account-books, Roscius also will produce his. The entry will be found in Chaerea's books, but not in those of Roscius.[d] Why should greater credit be 2
given to Chaerea's books than to those of Roscius? Would Chaerea have made such an entry of money

parties. The technical name for this contract is *expensilatio*, upon which the present action is founded.

[c] *Nomen* is an entry in the books, containing the names of debtors and creditors: here, *falsum perscribere nomen* is to make a false entry of a loan to Roscius.

[d] Apparently it was the general practice for the debtor to acknowledge the debt in his own books, but if he was an honest man, little harm would result from his omitting to do so.

tulisset ?—Non scripsisset hic, quod sibi expensum ferri iussisset ? Nam quem ad modum turpe est scribere, quod non debeatur, sic improbum est non referre, quod debeas. Aeque enim tabulae condemnantur eius, qui verum non rettulit, et eius, qui falsum perscripsit. Sed ego copia et facultate causae confisus vide quo progrediar. Si tabulas C. Fannius accepti et expensi profert suas in suam rem suo arbitratu scriptas, quo minus secundum illum iudice-
3 tis, non recuso. Quis hoc frater fratri, quis parens filio tribuit, ut, quodcumque rettulisset, id ratum haberet ? Ratum habebit Roscius ; profer ; quod tibi fuerit persuasum, huic erit persuasum, quod tibi fuerit probatum, huic erit probatum. Paulo ante M. Perpennae, P. Saturi tabulas poscebamus, nunc tuas, C. Fanni Chaerea, solius flagitamus et, quo minus secundum eas lis detur, non recusamus ; quid
4 ita non profers ? Non conficit tabulas ? Immo diligentissime. Non refert parva nomina in codices ? Immo omnes summas. Leve et tenue hoc nomen ? HS cccɪↄↄↄ sunt. Quo modo tibi tanta pecunia

[a] *Rettulit . . . perscripsit* the former is used of the debtor, the latter of the creditor. *Perscribere* is to write out in full.

[b] Perpenna was one of the judge's assessors. Saturius is well spoken of elsewhere by Cicero, but it is difficult to see why their account-books were called for.

[c] On the assumption that the sesterce = about two pence, large amounts can be roughly reduced to pounds sterling by dividing by 100. But it should be remembered that four sesterces make a denarius, which, like the δράχμη, was the average wage of a day-labourer, the "penny a day" of the New Testament. This seems a very large sum, and it is suggested that the most Fannius claimed was 50,000 sesterces (see § 38).

disbursed unless he had been authorized by Roscius ? Would not Roscius also have made an entry of money disbursed to him, if he had authorized Chaerea to make it ? For it is as dishonourable not to enter what you owe as it is disgraceful to set down as due from another what is not due. For the account-books of one who has not entered what is true are as much to be condemned as those of one who has written down [a] what is false. But see how far I am ready to go, relying upon the ample means I possess for proving my cause. If Gaius Fannius produces his accounts of money received and expended, set down in his own interest and in accordance with his pleasure, I have no objection to your giving judgement in his favour.
What brother or father thinks so highly of his brother 3
or son as to regard as confirmed whatever either of them has entered in his books ? Roscius will regard it as confirmed ; produce your books ; what you may have been convinced of, he will be convinced of ; what you may have approved of, he will approve of. A little time ago we asked for the account-books of Marcus Perpenna and Publius Saturius [b] ; we now urgently call for yours alone, Gaius Fannius Chaerea, and have no objection to judgement being given according to them in your favour ; so why do you not produce them ? Does he not make up his books ?
On the contrary, most carefully. Does he not enter 4
small amounts in his ledgers ? On the contrary, every sum. Is this debt unimportant and trifling ? It is 100,000 sesterces.[c] How is it that such a

extraordinaria iacet? quo modo HS cccIↃↃↃ in codice accepti et expensi non sunt? Pro di immortales! essene quemquam tanta audacia praeditum, qui, quod nomen referre in tabulas timeat, id petere audeat, quod in codicem iniuratus referre nolit, id iurare in litem non dubitet, quod sibi probare non possit, id persuadere alteri conetur!

5 II. Nimium cito ait me indignari de tabulis; non habere se hoc nomen in codicem accepti et expensi relatum confitetur, sed in adversariis patere contendit. Usque eone te diligis et magnifice circumspicis, ut pecuniam non ex tuis tabulis, sed adversariis petas? Suum codicem testis loco recitare arrogantiae est; suarum perscriptionum et liturarum adversaria
6 proferre non amentia est? Quodsi eandem vim, diligentiam auctoritatemque habent adversaria quam tabulae, quid attinet codicem instituere, conscribere, ordinem conservare, memoriae tradere litterarum vetustatem? Sed si, quod adversariis nihil credimus, idcirco codicem scribere instituimus, quod etiam apud omnes leve et infirmum est, id apud iudicem grave
7 et sanctum esse ducetur? Quid est, quod neglegenter scribamus adversaria? quid est, quod diligenter conficiamus tabulas? qua de causa? Quia haec sunt men-

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[a] *Extraordinaria pecunia* means money not acquired in the ordinary way (*e.g.* by inheritance or by a gift). Here apparently it means the omission of an entry which ought to be made.

[b] *Codex* (*accepti et expensi*) was a carefully arranged account-book, to which the *adversaria*, daily notes of income and expenditure (day-book, waste-book) were transferred every month. It is often called *tabulae*, literally, boards covered with wax, which could be smoothed over and used again.

large[a] sum of money lies neglected and is omitted from the books? how is it that 100,000 sesterces are not entered in the ledger[b]? Oh, immortal gods! to think that there can be a man so audacious as to dare to claim a sum which he is afraid to enter in his account-books; as not to hesitate to swear to a debt in court[c] which, when not on oath, he did not like to enter in his ledger; as to endeavour to persuade another of something which he cannot prove to his own satisfaction!

II. He says that I am in too great a hurry to ex- 5
press my indignation about the account-books; he admits that he has not this item entered in his ledger, but maintains that it can be seen by anyone in his day-book. Are you then so devoted to yourself, have you such an intense admiration of yourself, as to ask for money not on the strength of your account-books, but of your day-books? It is presumptuous to quote one's ledger as a witness; but is it not sheer madness to produce rough notes of one's entries and
erasures? But if day-books have the same value, 6
the same exactness, and the same authority as account-books, what is the use of making a ledger, of putting everything down, of keeping an ordered list of transactions or a record of old documents? But if, because we have no faith in day-books, we have adopted the practice of compiling ledgers, ought authority and sanctity to be attributed before the judge to what is considered by all to be feeble and unimportant?
What is the reason why we write our notes carelessly 7
but make up our ledgers carefully? What is the

[c] *Iurare in litem* is to make an oath regarding the matter in dispute, when the *iudex* required confirmation of a man's assertions upon oath.

strua, illae sunt aeternae; haec delentur statim, illae servantur sancte; haec parvi temporis memoriam, illae perpetuae existimationis fidem et religionem amplectuntur; haec sunt disiecta,[1] illae sunt in ordinem confectae. Itaque adversaria in iudicium protulit nemo; codicem protulit, tabulas recitavit. III. Tu, C. Piso, tali fide, virtute, gravitate, auctoritate ornatus ex adversariis pecuniam petere
8 non auderes. Ego, quae clara sunt consuetudine, diutius dicere non debeo; illud vero, quod ad rem vehementer pertinet, quaero: Quam pridem hoc nomen, Fanni, in adversaria rettulisti? Erubescit, quid respondeat, nescit, quid fingat extemplo, non habet. Sunt duo menses iam, dices. Tamen in codicem acceptum et expensum referri debuit. Amplius sunt sex menses. Cur tam diu iacet hoc nomen in adversariis? Quid si tandem amplius triennium est? quo modo, cum omnes, qui tabulas conficiant, menstruas paene rationes in tabulas transferant, tu hoc nomen triennium amplius in adversariis iacere pateris?
9 Utrum cetera nomina in codicem accepti et expensi digesta habes an non? Si non, quo modo tabulas conficis? si etiam, quam ob rem, cum cetera nomina in ordinem referebas, hoc nomen triennio amplius, quod erat in primis magnum, in adversariis relinque-

[1] deiecta *MSS.*, "*thrown down*," "*tossed aside*," *as if useless*: disiecta *Turnebus.*

reason? It is because day-books last for a month, ledgers for ever; day-books are immediately destroyed, ledgers are religiously preserved; day-books embrace the memory of a moment, ledgers attest the good faith and conscientiousness which ensure a man's reputation for all time; day-books are ill-arranged, ledgers are put together in order. This is why no one ever produces day-books in court; it is ledgers that are produced, it is account-books that are read.

III. You, Gaius Piso, distinguished as you are by integrity, virtue, dignity, and authority, would not venture to make a claim for money on the strength of day-books. As for myself, I ought not to dwell any 8
longer on matters as to which custom is perfectly clear; but I ask this question which is extremely pertinent to the matter in hand: How long is it, Fannius, since you entered this item in your day-books? He blushes, he does not know what to answer, he cannot invent anything on the spur of the moment. "It is now two months ago," you will say. Yet it ought to have been entered in the ledger of receipts and expenses. "It is more than six months." Why then did this item remain so long forgotten in the day-book? What pray, if it is more than three years ago? How is it that, when all other people who make up account-books transfer their accounts nearly every month into their books, you allow this item to lie neglected in your day-book for more than three years? Have you arranged all the other items of 9
receipts and expenses in the ledger or not? If you have not, how do you make up your books? if you have, why is it that, when entering all the other items in order, you left this item, which was an extremely large one, for more than three years in your day-book?

bas? Nolebas sciri debere tibi Roscium; cur scribebas? Rogatus eras, ne referres; cur in adversariis scriptum habebas?

Sed haec quamquam firma esse video, tamen ipse mihi satis facere non possum, nisi a C. Fannio ipso testimonium sumo, hanc pecuniam ei non deberi. Magnum est, quod conor, difficile est, quod polliceor; nisi eundem et adversarium et testem habuerit
10 Roscius, nolo vincat. IV. Pecunia tibi debebatur certa, quae nunc petitur per iudicem, in qua legitimae partis sponsio facta est. Hic tu si amplius HS nummo petisti, quam tibi debitum est, causam perdidisti, propterea quod aliud est iudicium, aliud est arbitrium. Iudicium est pecuniae certae, arbitrium incertae; ad iudicium hoc modo venimus, ut totam litem aut obtineamus aut amittamus; ad arbitrium hoc animo adimus, ut neque nihil neque tantum, quantum postu-
11 lavimus, consequamur. Ei rei ipsa verba formulae testimonio sunt. Quid est in iudicio? Derectum,

[a] Fannius had entered the item in the day-book, but had not transferred it to the ledger; and according to Cicero this is not sufficient ground to base an action upon, as Fannius is doing.

[b] The *lex Silia* (the date of which is unknown) introduced a new *legis actio* named *condictio*, synonymous with *denuntiatio* (notice, summons) by which the plaintiff summoned the defendant to appear in court in thirty days to appoint a judge to try the matter. It only applied to cases of a fixed sum of money (*certa pecunia*, that is, money promised by *stipulatio* or *expensilatio*), the action in this case being for the second instalment of 50,000 sesterces due from the 100,000 sesterces awarded by Piso to Fannius. A condiction

You did not want it to be known that Roscius was indebted to you. Why then did you put it down? "You had been asked not to enter it." Why then did you put it down in your day-book? [a]

But although I consider this is sufficiently convincing, I cannot feel satisfied unless I obtain evidence from Fannius himself that this money is not owing to him. What I am attempting is a great task; what I am promising is difficult; unless Roscius shall have the same man both as his opponent and his witness I do not want him to win his cause.

IV. A definite sum of money was owing to you, 10
which you now claim before a judge, and there was also an engagement to pay a third part of it in addition as appointed by law.[b] In this case, if you have claimed a sesterce more than is owing to you, you have lost your cause, because a judgement is one thing, arbitration is another. A judgement deals with a definite sum,[c] arbitration with an indefinite sum. We come before a judge on the understanding that we either gain or lose the suit entirely; we come before an arbitrator with the expectation, neither of losing everything nor of getting as much as we asked.
The terms of the formula themselves are evidence of 11
this. What is the formula in a judgement? It is

of this kind gave rise to a *sponsio poenalis tertiae partis*. Before the process began the defendant, by a *sponsio*, undertook to pay, besides the sum claimed, a third of that sum as a penalty, and the same applied to the plaintiff, in case judgement went against him. This is the meaning of *legitimae partis sponsio*, which was employed in the cases of a loan (*mutuum, data pecunia*), a literal contract (*expensilatio*), or a verbal contract (*stipulatio*). For *sponsio* see note on *Pro Quinctio*, § 34.

[c] After the arbitrator has given his decision.

asperum, simplex: SI PARET HS IↃↃↃ DARI—. Hic nisi planum facit HS IↃↃↃ ad libellam sibi deberi, causam perdit. Quid est in arbitrio? Mite, moderatum: QUANTUM AEQUIUS ET MELIUS SIT DARI. Ille tamen confitetur plus se petere, quam debeatur, sed satis superque habere dicit, quod sibi ab arbitro tribuatur. Itaque alter causae confidit, alter diffidit.

12 Quae cum ita sint, quaero abs te, quid ita de hac pecunia, de his ipsis HS IↃↃↃ de tuarum tabularum fide compromissum feceris, arbitrum sumpseris, quantum aequius et melius sit dari repromittique, sic petieris.[1] Quis in hanc rem fuit arbiter? Utinam is quidem Romae esset! Romae est. Utinam adesset in iudicio! Adest. Utinam sederet in consilio C. Pisonis! Ipse C. Piso est. Eundemne tu arbitrum et iudicem sumebas? eidem et infinitam largitionem remittebas et eundem in angustissimam formulam sponsionis concludebas? Quis umquam ad arbitrum, quantum petiit, tantum abstulit? Nemo; quantum enim aequius esset sibi dari, petiit. De quo nomine

13 ad arbitrum adisti, de eo ad iudicem venisti! Ceteri cum ad iudicem causam labefactari animadvertunt, ad arbitrum confugiunt, hic ab arbitro ad iudicem venire

[1] si peieres *MSS.*: si pareret *Lambinus*: sic petieris *Mommsen*: si paret deberi *Kayser*: si pareat *Clark.*

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[a] Supplying *oportere* after *dari*, as it would appear in the formula.

[b] *Compromissum* or *transactio* was a promise given by both parties to abide by the award of the arbitrator.

[c] Cicero asks why he accepted an *arbiter* at all or made any agreement, when he had his own *tabulae* to rely on.

[d] The various readings, with the exception of Mommsen's given in the text, have the *si paret* or *pareat* of the formula: "if it is shown. . . ." *Sic petieris* refers to putting the claim before an arbitrator, who would decide the question *quantum aequius et melius*.

precise, severe, and simple: IF IT IS SHOWN THAT 50,000 SESTERCES OUGHT TO BE PAID.[a] Unless the claimant can prove that the sum of 50,000 sesterces to a farthing is owing to him, he loses his cause. What is the formula in arbitration? It is mild and moderate: AS MUCH AS IT SEEMS FAIR AND JUST SHOULD BE GIVEN. Yet in this case the claimant admits that he is asking for more than is due to him, but he says that he will be satisfied and more than satisfied with what is awarded him by the arbitrator. Thus the one has confidence in his cause, the other has not. This being so, I ask you why, 12

as you did, in regard to this money, to these very 50,000 sesterces to which your *tabulae* bear proof, you entered into an "agreement,"[b] why you accepted an arbitrator,[c] and made your claim in such a manner[d] that it might be fixed how much it "seems fair and just" should be given or promised on the other side. Who was the arbitrator in this matter? Would that he was in Rome! He is in Rome. Would that he were on the bench! He is. Would that he were sitting as Piso's assessor! It is the same Piso himself. Did you accept the same man as arbitrator and judge? Did you allow the same man unlimited freedom of action and also tie him down to the narrowest formula of the agreement? Who ever obtained all that he claimed before an arbitrator? Nobody; for he only claimed what it seemed fair and right should be given him. You have now come before a judge with a claim for the same amount as that for which you approached an arbitrator! Others, 13

when they perceive that their cause is likely to fail before a judge, have recourse to an arbitrator, but

est ausus! qui cum de hac pecunia tabularum fide arbitrum sumpsit, iudicavit sibi pecuniam non deberi.

Iam duae partes causae sunt confectae; adnumerasse sese negat, expensum tulisse non dicit, cum tabulas non recitat. Reliquum est, ut stipulatum se esse dicat; praeterea enim quem ad modum certam pecuniam petere possit, non reperio. V. Stipulatus es—ubi, quo die, quo tempore, quo praesente? quis
14 spopondisse me dicit? Nemo. Hic ego si finem faciam dicendi, satis fidei et diligentiae meae, satis causae et controversiae, satis formulae et sponsioni, satis etiam iudici fecisse videar, cur secundum Roscium iudicari debeat. Pecunia petita est certa; cum tertia parte sponsio facta est. Haec pecunia necesse est aut data aut expensa lata aut stipulata sit. Datam non esse Fannius confitetur, expensam latam non esse codices Fanni confirmant, stipulatam non esse
15 taciturnitas testium concedit. Quid ergo est? Quod et reus is est, cui[1] et pecunia levissima et existimatio sanctissima fuit semper, et iudex est is, quem nos non minus bene de nobis existimare quam secundum nos iudicare velimus, et advocatio ea est, quam propter

[1] res eius est cuius *MSS.*: reus is est cui *Manutius.*

[a] If the *tabulae* were honest, there was no case for an arbitrator; to accept arbitration is a proof of fraud.

[b] That is, it was not a loan. *Adnumerare* is to pay down the money, hand it over as a loan (*adnumeratio, datio*). For *expensum ferre* see on § 1.

[c] There were three methods of proof of a debt, none of which was employed by Fannius. The money was not paid in cash (*data, adnumerata*); it was not a written acknowledgement of debt contained in the *tabulae*; there was no *stipulatio* before witnesses.

[d] *Advocatio*, the body of *advocati*, by whom may be meant either friends who attended the court to support the parties, or the assessors of the judge, elsewhere spoken of as

Fannius has ventured to apply to an arbitrator from a judge! The man who, as regards the sum of money, assuming that his *tabulae* were trustworthy, has accepted an *arbiter*, has passed judgement that the money was not due.[a]

Two parts of the cause are now finished. Fannius admits that he did not pay the money,[b] he does not say that he entered it as paid, since he does not quote his account-books. His only remaining alternative is to say that he made a stipulation.[c] For I cannot imagine how there can be any other way of claiming a fixed sum of money. [V.] You made a stipulation: when? on what day? at what time? in whose presence? who says that I made a promise? Nobody.
If I were to finish my pleading at this point, I should 14
think that I had done enough to prove my good faith and carefulness, enough for the cause and the question at issue, enough for the formula and the "engagement," enough even to convince the judge why a decision ought to be given in favour of Roscius. A fixed sum of money has been claimed; an "engagement" has been given for a third part of it. This money must either have been a loan or a literal or a verbal contract. Fannius admits that it was not lent; his ledgers prove that it was not a literal contract, the silence of witnesses proves that it was not a stipula-
tion. Need I say more? But since the defendant 15
is a man who has always thought very little of money, but has considered his reputation to be most sacred; since the judge is a man whose favourable opinion of us we desire as much as his decision in our favour; since the distinguished and brilliant assembly of counsel[d]

"vos qui in consilio adestis," "hi quos tibi advocasti" (*Pro Quinctio*, ii. § 5, § 10).

eximium splendorem ut iudicem unum[1] vereri debeamus, perinde ac si in hanc formulam omnia iudicia legitima, omnia arbitria honoraria, omnia officia domestica conclusa et comprehensa sint, perinde dicemus. Illa superior fuit oratio necessaria, haec erit voluntaria, illa ad iudicem, haec ad C. Pisonem, illa pro reo, haec pro Roscio, illa victoriae, haec bonae existimationis causa comparata.

16 VI. Pecuniam petis, Fanni, a Roscio. Quam? dic audacter et aperte. Utrum quae tibi ex societate debeatur, an quae ex liberalitate huius promissa sit et ostentata? Quorum alterum est gravius et odiosius, alterum levius et facilius. Quae ex societate debeatur? Quid ais? Hoc iam neque leviter ferendum est neque neglegenter defendendum. Si qua enim sunt privata iudicia summae existimationis et paene dicam capitis, tria haec sunt, fiduciae, tutelae, societatis. Aeque enim perfidiosum et nefarium est fidem frangere, quae continet vitam, et pupillum fraudare, qui in tutelam pervenit, et socium fallere,
17 qui se in negotio coniunxit. Quae cum ita sint, quis sit, qui socium fraudarit et fefellerit, consideremus; dabit enim nobis iam tacite vita acta in alterutram partem firmum et grave testimonium. Q. Roscius?

[1] mutum *Müller*: Minoem *Paul*: unicum *Ernesti*.

[a] *Unum*: emphatic, in the sense of pre-eminent.

[b] The first, as being supposed to be derived from the law, are *legitima*; the others, arising generally from the praetor's edict by virtue of his power of jurisdiction (*ex iurisdictione*), are called *honoraria*.

[c] If a man failed to perform his duty properly as a partner, an action called *iudicium pro socio* (an action to regulate the accounts between partners) could be brought against him. Condemnation brought *infamia* against the offender.

present ought to make us respect them as if they were one single[a] judge, we will speak just as if all civil and equity actions[b] and all private duties were included and comprehended in the formula which is the basis of this discussion. What I have said before was necessary; what I am going to say will be voluntary. Then I was addressing myself to a judge, now I address myself to Gaius Piso; then I was pleading for an accused person, now for Roscius; my former speech was prepared in order to win a cause, the latter to save a good reputation.

VI. You, Fannius, demand money from Roscius. 16
What money? Speak boldly and frankly. Was it owing to you from the partnership, or money which had been promised and offered you by my client's generosity? The one is a serious and hateful charge, the other less important and easier to deal with. Is it money owing on the strength of the partnership? What do you say? This is a charge that cannot be lightly borne nor carelessly repelled. For if there are any private actions that most deeply affect a man's reputation —I had almost said his existence—they are the three following: actions covering trust, guardianship, partnership.[c] For it is as treacherous and criminal to cheat the partner who has combined with us in business as it is to break faith, which holds society together, and to defraud one's ward who has come under our guardianship. This being so, let us consider 17
who it is that has cheated and deceived his partner; for his past life will afford us silent, but weighty and convincing, evidence either for or against him.

Quid ais ? nonne, ut ignis in aquam coniectus continuo restinguitur et refrigeratur, sic refervens falsum crimen in purissimam et castissimam vitam collatum statim concidit et exstinguitur ? Roscius socium fraudavit ! Potest hoc homini huic haerere peccatum ? qui medius fidius (audacter dico) plus fidei quam artis, plus veritatis quam disciplinae possidet in se, quem populus Romanus meliorem virum quam histrionem esse arbitratur, qui ita dignissimus est scaena propter artificium, ut dignissimus sit curia
18 propter abstinentiam. Sed quid ego ineptus de Roscio apud Pisonem dico ? Ignotum hominem scilicet pluribus verbis commendo. Estne quisquam omnium mortalium, de quo melius existimes tu ? estne quisquam, qui tibi purior, pudentior, humanior, officiosior liberaliorque videatur ? Quid ? tu, Saturi, qui contra hunc venis, existimas aliter ? nonne, quotienscumque in causa in nomen huius incidisti, totiens hunc et virum bonum esse dixisti et honoris causa appellasti ? quod nemo nisi aut honestissimo aut amicissimo
19 facere consuevit. Qua in re mihi ridicule es visus esse inconstans, qui eundem et laederes et laudares, et virum optimum et hominem improbissimum esse diceres. Eundem tu et honoris causa appellabas et virum primarium esse dicebas et socium fraudasse arguebas ? Sed, ut opinor, laudem veritati tribuebas, crimen gratiae concedebas ; de hoc, ut ex-

[a] *Honoris causa*, also *gratia*. The particular mention of a person's name was considered a mark of respect: *cf. Pro Quinctio*, § 28 " Flaccum imperatorem quem honoris gratia nomino," *Pro Roscio Amerino*, § 6 " L. Sulla, quem honoris causa nomino.'

Quintus Roscius ? What say you ? If hot coals, when thrown into water, are at once cooled and extinguished, do not the fiery arrows of slander, when brought up against a life of the greatest innocence and purity, immediately fall to the ground and lose their fire ? Roscius cheated his partner ! Can such an offence be fastened on this man ? a man who, so help me the god of truth ! (and I say so quite fearlessly) has in him more good faith than art, more truth than learning ; a man whom the Roman people respects more highly as a man than as an actor, who by his talent is most worthy of the stage as he is of
the senate by his purity of life. But why am I so 18
foolish as to speak of Roscius before Piso ? I am praising him at some length—an unknown man, no doubt ! Is there any man in the world of whom you have a better opinion ? Is there anyone whom you think more virtuous, more modest, more refined, more ready to oblige, or more generous ? Well ? do you, Saturius, who appear against him, hold a different opinion ? In this cause, as often as you had occasion to mention his name, did you not each time declare that he was an honourable man and that you spoke of him with respect [a]—a compliment usually paid only to a most distinguished person or a most intimate
friend ? In this you seemed to me to be absurdly 19
inconsistent, in praising and attacking the same man, in calling him at one and the same time a most excellent man and a thorough rascal. Did you mention the same man out of respect, call him most distinguished, and at the same time accuse him of having cheated his partner ? But, I suppose, your praise was a tribute paid to truth, the accusation was a concession to influence. It was you who were speak-

istimabas, praedicabas, Chaereae arbitratu causam agebas.

VII. Fraudavit Roscius! Est hoc quidem primum auribus animisque omnium absurdum. Quid si tandem aliquem divitem timidum, dementem, inertem nactus esset, qui experiri non posset? Tamen incredibile esset. Verum tamen, quem fraudarit,
20 videamus. C. Fannium Chaeream Roscius fraudavit! Oro atque obsecro vos, qui nostis, vitam inter se utriusque conferte, qui non nostis, faciem utriusque considerate. Nonne ipsum caput et supercilia illa penitus abrasa olere malitiam et clamitare calliditatem videntur? non ab imis unguibus usque ad verticem summum, si quam coniecturam affert hominibus tacita corporis figura, ex fraude, fallaciis, mendaciis constare totus videtur? qui idcirco capite et superciliis semper est rasis, ne ullum pilum viri boni habere dicatur; cuius personam praeclare Roscius in scaena tractare consuevit, neque tamen pro beneficio ei par gratia refertur. Nam Ballionem illum improbissimum et periurissimum lenonem cum agit, agit Chaeream; persona illa lutulenta, impura, invisa in huius moribus, natura vitaque est expressa. Qui quam ob rem Roscium similem sui in fraude et malitia existimarit, mirum[1] mihi videtur, nisi forte quod praeclare hunc
21 imitari se in persona lenonis animadvertit. Quam ob rem etiam atque etiam considera, C. Piso, quis quem fraudasse dicatur. Roscius Fannium! Quid est hoc?

[1] mihi *MSS.*: mirum *Madvig*: mihi vix videtur *Clark.*

[a] The name of a pimp in the *Pseudolus* of Plautus.

ing in praise of Roscius, as you really thought him to be; it was at the pleasure of Fannius that you were pleading your cause.

VII. Roscius cheated! This is in truth an absurdity for anyone to hear or think of. What, I ask, if he had found some nervous, crazed, helpless rich man, who was incapable of going to law with him? Even then it would be incredible. All the same, let us
see whom he cheated. Roscius cheated Gaius 20
Fannius Chaerea! I beg and beseech you, who know them, to contrast their lives; you who do not know them, look at their faces. Do not the head itself, and those clean-shaven eyebrows seem to reek of malice and proclaim craftiness aloud? If one can make a guess from the silent form of a man's body, does not Fannius seem to be composed entirely of fraud, trickery, and lies from the tips of his fingers to the top of his head? He always has his head and eyebrows shaved, that he may not be accused of having a single hair of an honourable man on him; Roscius has constantly portrayed him brilliantly on the stage—and yet he is not adequately rewarded with gratitude in return for his kindness. For when he plays Ballio,[a] that most rascally and perjured pimp, Roscius really represents Chaerea; that filthy, impure, and detested character is the image of Chaerea in manners, disposition, and life. It seems to me astonishing why he should have thought Roscius resembled him in fraud and wickedness, unless perhaps he noticed that he imitated him
admirably in the character of the pimp. Therefore 21
I ask you, Gaius Piso, consider again and again who is said to have cheated and whom. Roscius cheated Fannius! What does this mean? A good man is

probus improbum, pudens impudentem, periurum castus, callidum imperitus, liberalis avidum? Incredibile est. Quem ad modum, si Fannius Roscium fraudasse diceretur, utrumque ex utriusque persona veri simile videretur, et Fannium per malitiam fecisse, et Roscium per imprudentiam deceptum esse, sic, cum Roscius Fannium fraudasse arguatur, utrumque incredibile est, et Roscium quicquam per avaritiam appetisse, et Fannium quicquam per bonitatem amisisse.

22 VIII. Principia sunt huius modi; spectemus reliqua. HS iɔɔɔ Q. Roscius fraudavit Fannium. Qua de causa? Subridet Saturius, veterator, ut sibi videtur; ait propter ipsa HS iɔɔɔ. Video; sed tamen, cur ipsa HS iɔɔɔ tam vehementer concupierit, quaero; nam tibi, M. Perpenna, C. Piso, certe tanti non fuissent, ut socium fraudaretis. Roscio cur tanti fuerint, causam requiro. Egebat? Immo locuples erat. Debebat? Immo in suis nummis versabatur. Avarus erat? Immo etiam ante quam locuples semper
23 liberalissimus munificentissimusque fuit. Pro deum hominumque fidem! qui HS ccciɔɔɔ ccciɔɔɔ ccciɔɔɔ quaestus facere noluit (nam certe HS ccciɔɔɔ ccciɔɔɔ ccciɔɔɔ merere et potuit et debuit, si potest Dionysia HS ccciɔɔɔ ccciɔɔɔ merere), is per summam fraudem et malitiam et perfidiam HS iɔɔɔ appetiit? Et illa fuit pecunia immanis, haec parvula, illa honesta, haec

[a] A famous female dancer.

said to have cheated a rascal, a modest man a shameless one, a virtuous man a perjurer, an inexperienced man a crafty knave, a generous man a greedy one? It is incredible. Just as, if it were said that Fannius had cheated Roscius, it would appear probable, judging from the character of each man, that Fannius had acted like a rogue and that Roscius had been deceived owing to his want of caution, so in like manner, when Roscius is accused of having cheated Fannius, it seems incredible, either that Roscius strove to secure any advantage owing to his avarice or that Fannius lost anything owing to his good nature.

VIII. Such is the starting-point of this affair; let 22
us see what happened afterwards. Quintus Roscius cheated Fannius of 50,000 sesterces. On what grounds? Saturius smiles, the cunning old fellow, as he thinks himself to be; he says, on account of the same 50,000 sesterces. I see; nevertheless, I should like to ask why he was so intensely eager to have those sesterces; for certainly such a sum would not have been enough to make it worth while for you, Marcus Perpenna, or you, Gaius Piso, to cheat a partner. Why were they worth so much to Roscius, is what I want to know. Was he in want? No, he was wealthy. Had he any debts? No, he had plenty of money. Was he a miser? No, even before he became rich, he was always most liberal and generous. Good heavens! 23
a man who refused to make a profit of 300,000 sesterces—for certainly he could and ought to have earned that amount if Dionysia[a] can earn 200,000—did he employ the greatest fraud, wickedness, and perfidy for the sake of obtainiug 50,000 sesterces? The first sum was immense, honourably acquired, agreeable to gain, his own property;

sordida, illa iucunda, haec acerba, illa propria, haec in causa et in iudicio collocata. Decem his annis proximis HS sexagiens honestissime consequi potuit; noluit. Laborem quaestus recepit, quaestum laboris reiecit; populo Romano adhuc servire non destitit,
24 sibi servire iam pridem destitit. Hoc tu umquam, Fanni, faceres? et si hos quaestus recipere posses, non eodem tempore et gestum et animam ageres? Dic nunc te ab Roscio HS IↃↃ circumscriptum esse, qui tantas et tam infinitas pecunias non propter inertiam laboris, sed propter magnificentiam liberalitatis repudiarit! Quid ego nunc illa dicam, quae vobis in mentem venire certo scio? Fraudabat te in societate Roscius! Sunt iura, sunt formulae de omnibus rebus constitutae, ne quis aut in genere iniuriae aut in ratione actionis errare possit. Expressae sunt enim ex unius cuiusque damno, dolore, incommodo, calamitate, iniuria publicae a praetore formulae, ad
25 quas privata lis accommodatur. IX. Quae cum ita sint, cur non arbitrum pro socio adegeris Q. Roscium, quaero. Formulam non noras? Notissima erat. Iudicio gravi experiri nolebas? Quid ita? propter familiaritatem veterem? Cur ergo laedis? Propter integritatem hominis? Cur igitur insimulas? Propter magnitudinem[1] criminis? Itane vero? quem per

[1] aegritudinem *MSS.*: magnitudinem *Manutius.*

[a] A. C. Clark points out that ten times 300,000 is 3,000,000, not 6,000,000. He therefore reads IↃↃ CCCIↃↃↃ (with Schütz), 600,000 sesterces, unless *decem* (x.) be altered to *viginti* (xx.).

[b] See note on *Pro Quinctio*, iii. § 13.

the second was paltry, sordid, distressing, depending on an action and a trial. In the last ten years Roscius could have made 6,000,000 sesterces[a]; he would not. The labour that could earn a fortune he undertook; the fortune it might have brought he rejected. He has never ceased to serve the Roman people; he has long since ceased to serve his own
interests. Would you ever do this, Fannius? and 24
if you could make such profits, would you not have mouthed and ranted until you had actually and in fact no breath left? Say now that you have been cheated of 50,000 sesterces by Roscius, who refused such vast, such stupendous sums, not because he was too lazy to work for them, but because he was so magnificently generous. Why need I say now, gentlemen, what I feel sure you are thinking? Roscius cheated you in a partnership! There are laws, there are formulae established for every kind of action, so that no one can possibly be mistaken as to the nature of the injury done to him or the method of legal procedure to be adopted. For according to the loss, vexation, inconvenience, disaster, or injustice suffered by each individual, public formulae have been drawn up by the praetor in precise terms, to which every private action can be adapted.

IX. This being so, I ask why you did not press 25
Roscius to agree to an arbitrator in a case of partnership?[b] You did not know the formula? But it was well known. Were you unwilling to bring an action against him the result of which might be serious? Why so? On account of your long-standing friendship? Why then do you attack him? On account of the man's integrity? Why then do you accuse him? On account of the gravity of the charge? Is this

arbitrum circumvenire non posses, cuius de ea re proprium erat[1] iudicium, hunc per iudicem condemnabis, cuius de ea re nullum est arbitrium? Quin tu hoc crimen aut obice ubi licet agere, aut iacere noli ubi non oportet. Tametsi iam hoc tuo testimonio crimen sublatum est. Nam, quo tu tempore illa formula uti noluisti, nihil hunc in societatem fraudis fecisse indicasti.[2] Tabulas habes an non? Si non habes, quem ad modum pactio est? si habes,
26 cur non nominas? Dic nunc Roscium abs te petisse, ut familiarem suum sumeres arbitrum! Non petiit. Dic pactionem fecisse, ut absolveretur! Non pepigit. Quaere, quare sit absolutus? Quod erat summa innocentia et integritate. Quid enim factum est? Venisti domum ultro Rosci, satis fecisti; quod temere commisisti, in iudicium ut denuntiaret, rogasti, ut ignosceret; te affuturum negasti, debere tibi ex societate nihil clamitasti. Iudici hic denuntiavit; absolutus est. Tamen fraudis ac furti mentionem facere audes? Perstat in impudentia. "Pactionem enim," inquit, "mecum fecerat." Idcirco videlicet, ne condemnaretur. Quid erat causae, cur metueret, ne condemnaretur?—Res erat manifesta, furtum erat apertum.

1 non *before* erat MSS.: *Manutius delevit.*
2 *The text is corrupt here. Other readings are* iudicasti; ostendisti. *Clark adds* Dic enim *before* tabulas.

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a If *non* is retained before *erat*, the meaning is that "in this case it was not for an arbitrator to give a strict verdict any more than for a *iudex* to regard all the equities" (Roby, 488 note).
b Before an arbitrator.
c Roby thinks *cur non nominas* unintelligible and probably corrupt.

indeed really so? Will you secure the condemnation by a judge, who has none of the powers of an arbitrator in a matter like this, of the man whom you could not get the better of before an arbitrator, whose proper function it was to pronounce a decision upon it?[a] Then either launch this charge where it is lawful to start an action[b] or do not launch it where it ought not to be brought. However, your own evidence has already refuted it. For at the time when you refused to employ that formula, you indicated that Roscius had not been guilty of fraud against the partnership. Have you the account-books or not? If not, how can there be an arrangement? If you have, why not
name[c] the arrangement? Say now that Roscius 26
asked you to accept his own friend as arbitrator! He did not do so. Say that he made an arrangement in order to be acquitted! He made no arrangement. Ask why he was acquitted. Because he was perfectly innocent and a man of the highest integrity. For what took place? You went to Roscius's house of your own accord; you apologized; you begged him to pardon your hasty action[d] and to inform the judge[e] that an arrangement had been come to; you said that you would not appear again, and loudly declared that nothing was owing to you from the partnership. Roscius informed the judge and was acquitted. And yet do you still venture to mention fraud and theft? Fannius persists in his impudence. "Yes," says he, "but he had made an arrangement with me." Of course, to avoid being condemned. But what reason was there why he should be afraid of being condemned? The fact was clear, the theft was obvious.

d In summoning him to court.
e That is, the arbitrator.

27 Cuius rei furtum factum erat? Exorditur magna
cum expectatione veteris histrionis exponere socie-
tatem. X. "Panurgus," inquit, "fuit Fanni; is fit
ei cum Roscio communis." Hic primum questus est
non leviter Saturius communem factum esse gratis
cum Roscio, qui pretio proprius fuisset Fanni. Lar-
gitus est scilicet homo liberalis et dissolutus et
28 bonitate affluens Fannius Roscio. Sic puto. Quoniam
ille hic constitit paulisper, mihi quoque necesse est
paulum commorari. Panurgum tu, Saturi, proprium
Fanni dicis fuisse. At ego totum Rosci fuisse con-
tendo. Quid erat enim Fanni? Corpus. Quid
Rosci? Disciplina. Facies non erat, ars erat pre-
tiosa. Ex qua parte erat Fanni, non erat HS ııı∞,
ex qua parte erat Rosci, amplius erat HS cccıɔɔɔ;
nemo enim illum ex trunco corporis spectabat, sed
ex artificio comico aestimabat; nam illa membra
merere per se non amplius poterant duodecim aeris,
disciplina, quae erat ab hoc tradita, locabat se non
29 minus HS cccıɔɔɔ. O societatem captiosam et in-
dignam, ubi alter, HS ııı∞, alter, cccıɔɔɔ quod sit,
in societatem affert! nisi idcirco moleste pateris,
quod HS ııı∞ tu ex arca proferebas, HS cccıɔɔɔ ex
disciplina et artificio Roscius promebat. Quam enim
spem et expectationem, quod studium et quem
favorem secum in scaenam attulit Panurgus, quod

[a] Panurgus had been a *histrio*, a word which originally meant a dancer or pantomimist, and then an actor generally.

[b] This seems to be too high a value, the usual price being 500 drachmae (about £18); although Mommsen gives ıɔɔɔ∞ (6,000). Clark reads HS∞ (1000), and cccıɔɔɔıɔɔɔ (150,000, with Mommsen). ∞ = 1000.

What was stolen? The advocate, with everyone 27
on the tiptoe of expectation, begins to set forth the
history of the partnership in the old actor.[a] [X.] "Pan-
urgus," says he, "was the slave of Fannius, and be-
came the common property of Fannius and Roscius."
At this point Saturius first complained bitterly that
Roscius had become joint-possessor for nothing of a
slave who had been bought by Fannius and was his
private property. Of course Fannius, that generous
man, careless about money, overflowing with kindness,
made a present of him to Roscius. I suppose so!
Since Saturius dwelt some little time on this point, 28
I also must linger a little. You assert, Saturius, that
Panurgus was the private property of Fannius. But
I contend that he belonged entirely to Roscius. For
what part of him belonged to Fannius? His body.
What part belonged to Roscius? His training. It
was not his personal appearance, but his skill as an
actor that was valuable. What belonged to Fannius
was not worth more than 4000[b] sesterces; what be-
longed to Roscius was worth more than 100,000
sesterces, for no one judged him by his body, but
valued him by his skill as a comedian; his limbs, by
themselves, could not earn more than twelve *asses*, but
the training, which he had received from Roscius,
yielded no less than 100,000 sesterces. What a tricky 29
and unworthy partnership, into which one of the
partners contributes 4000 sesterces, the other some-
thing worth 100,000 sesterces, unless perhaps you are
annoyed at having to draw 4000 sesterces from your
strong box, whereas Roscius brought forth 100,000 as
the result of his training and skill. What hopes, what
expectations, what enthusiasm, what favour accom-
panied Panurgus on the stage, because he was the

Rosci fuit discipulus ! Qui diligebant hunc, illi favebant, qui admirabantur hunc, illum probabant, qui denique huius nomen audierant, illum eruditum et perfectum existimabant. Sic est vulgus ; ex veritate
30 pauca, ex opinione multa aestimat. Quid sciret ille, perpauci animadvertebant, ubi didicisset, omnes quaerebant ; nihil ab hoc pravum et perversum produci posse arbitrabantur. Si veniret ab Statilio, tametsi artificio Roscium superaret, adspicere nemo posset ; nemo enim, sicut ex improbo patre probum filium nasci, sic a pessimo histrione bonum comoedum fieri posse existimaret. Quia veniebat a Roscio, plus etiam scire, quam sciebat, videbatur. XI. Quod item nuper in Erote comoedo usu venit ; qui posteaquam e scaena non modo sibilis, sed etiam convicio explodebatur, sicut in aram confugit in huius domum, disciplinam, patrocinium, nomen itaque perbrevi tempore, qui ne in novissimis[1] quidem erat histrionibus,
31 ad primos pervenit comoedos. Quae res extulit eum ? Una commendatio huius ; qui tamen Panurgum illum, non solum ut Rosci discipulus fuisse diceretur, domum recepit, sed etiam summo cum labore, stomacho miseriaque erudiit. Nam quo quisque est sollertior et ingeniosior, hoc docet iracundius et laboriosius; quod enim ipse celeriter arripuit, id cum tarde percipi videt, discruciatur. Paulo longius

[1] novissimis *MSS.*: vilissimis *Clark.*

[a] A second-rate actor.

pupil of Roscius ! All who were devoted to Roscius and admired him favoured and approved of the pupil; in short, all who had heard the name of Roscius thought Panurgus an accomplished and finished comedian. This is the way of the crowd ; its judgements are seldom founded on truth, mostly on opinion.
Very few appreciated what he knew, everybody 30
wanted to know where he had learnt it. They did not think that anything irregular or wrong could come out of Roscius. If he had come from Statilius,[a] although he might have surpassed Roscius in skill, no one would have looked at him ; for no one would think that a good comedian could be made out of a very bad actor any more than a worthy son be born from an unworthy father. Because Panurgus came from Roscius he seemed to know even more than he did.

XI. The same thing also happened recently in the case of the comedian Eros. Driven off the stage, hissed and even insulted, he took refuge as at an altar in the house of Roscius, who gave him instruction, patronage, and his name ; and so, in a very short time, he who had not even been considered good enough for the lowest class of actors attained a position among the most distinguished comedians.
What was it that raised him so high ? Only the re- 31
commendation of Roscius, who after this not only took Panurgus to his house that he might be spoken of as one of his pupils, but taught him with the greatest pains, irritability, and discomfort. In fact, the cleverer and more talented a man is, the more ill-tempered and worried he is as a teacher ; for when he sees that a pupil is slow at grasping what he himself has mastered so rapidly, he is tormented. I have

oratio mea provecta est hac de causa, ut condicionem societatis diligenter cognosceretis.

32 Quae deinde sunt consecuta? "Panurgum," inquit, "hunc servum communem, Q. Flavius Tarquiniensis quidam interfecit. In hanc rem," inquit, "me cognitorem dedisti. Lite contestata, iudicio damni iniuria constituto tu sine me cum Flavio decidisti." Utrum pro dimidia parte an pro tota societate[1]? planius dicam: utrum pro me an et pro me et pro te? Pro me; potui exemplo multorum; licitum est iure; fecerunt multi; nihil in ea re tibi iniuriae feci. Pete tu tuum, exige et aufer, quod debetur; suam quisque partem iuris possideat et persequatur.—At enim tu tuum negotium gessisti bene.—Gere et tu tuum bene.—Magno tu tuam dimidiam partem decidisti.—Magno et tu tuam partem decide.—HS ccciↃↃↃ tu abstulisti.—† Si fit
33 hoc vero,[2] HS ccciↃↃↃ tu quoque aufer. XII. Sed hanc decisionem Rosci oratione et opinione augere licet, re et veritate mediocrem et tenuem esse invenietis. Accepit enim agrum temporibus iis, cum

[1] *Clark, comparing* § 34, *reads* an pro re tota: pro tota *MSS.*: societate *is inserted by Naugerius, as also* tu.

[2] si fit hoc vero *MSS.*: si sit hoc vero *Hotman*: sit ita hoc vero *Clark.*

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[a] *Cognitor*, who was appointed for a particular suit or cause of suit (*in litem*) in a set form of words in the presence of the opponent.

[b] In the *litis contestatio* both parties, before the praetor, made declarations to prepare the question for its transference to the *iudex*. At these proceedings the parties called upon certain persons to be witnesses (*testes estote*), so as to keep an oral record of what happened before the praetor. The action was brought under the *lex Aquilia*, called after Aquilius the tribune who proposed it. It was probably

been led to mention these details at some length, in order that you might have an accurate knowledge of the conditions under which the partnership was formed.

What followed next? "Panurgus, this joint slave," 32
says Fannius, "was assassinated by a certain Quintus Flavius of Tarquinii. You appointed me as your agent[a] to act for you in this affair. After the suit had been entered upon,[b] and an action for damages had been appointed, you came to an agreement with Flavius without my being consulted." Was it for a half share or for the partnership as a whole? To put it more plainly. Was it for myself alone, or for both of us? For myself alone; it was in my power to do so, following many precedents; it is allowed by law; many have done it; I have done you no injury by doing so. Ask for your share; get paid and carry off what is due to you; let each demand the share that legally belongs to him and do his best to get it. "Well, you managed your business very cleverly." Go you and do likewise. "You got a very high price for your half." Go you and do the same. "You got 100,000 sesterces."[c] If this is really the case, do you also get 100,000 sesterces.

XII. But this settlement of Roscius can easily be 33
exaggerated by talk and public opinion; in fact and truth you will find it moderate and inconsiderable. He obtained a farm at a time when the prices of

passed at the third secession of the plebs. In its first chapter it was provided that if a man has unlawfully killed another man's slave, he shall pay the owner whatever was his highest value in the year preceding. The amount would be doubled if the claim were contested.

[c] According to Mommsen, 600,000; he reads HSQ ccciↃↃↃ (Q = 500,000).

iacerent pretia praediorum; qui ager neque villam habuit neque ex ulla parte fuit cultus; qui nunc multo pluris est, quam tunc fuit. Neque id est mirum. Tum enim propter rei publicae calamitates omnium possessiones erant incertae, nunc deum immortalium benignitate omnium fortunae sunt certae; tum erat ager incultus sine tecto, nunc est
34 cultissimus cum optima villa. Verum tamen, quoniam natura tam malevolus es, numquam ista te molestia et cura liberabo. Praeclare suum negotium gessit Roscius, fundum fructuosissimum abstulit; quid ad te? Tuam partem dimidiam, quem ad modum vis, decide. Vertit hic rationem et id, quod probare non potest, fingere conatur. "De tota re," inquit, "decidisti."

Ergo huc universa causa deducitur, utrum Roscius cum Flavio de sua parte an de tota societate fecerit
35 pactionem. Nam ego Roscium, si quid communi nomine tetigit, confiteor praestare debere societati.—Societatis, non suas lites redemit, cum fundum a Flavio accepit.—Quid ita satis non dedit amplius assem[1] neminem petiturum? Qui de sua parte decidit, reliquis integram relinquit actionem, qui pro sociis transigit, satis dat neminem eorum postea petiturum. Quid ita Flavio sibi cavere non venit in mentem? nesciebat videlicet Panurgum fuisse in so-

[1] a se *MSS.*: *omitted by Orelli*: assem *Clark.*

[a] Chaerea's jealousy of Roscius's good bargain.

[b] In a full settlement, Roscius would have had to give a guarantee against further claims (*neminem amplius petiturum*).

country properties were low; it contained no homestead and was entirely uncultivated; to-day it is worth far more than it was then. There is nothing surprising in this. For at that time, owing to the disasters by which the republic was afflicted, no one's property was secure; now, thanks to the kindness of the immortal gods, everyone's possessions are assured; then the farm was uncultivated, without a building upon it; now it is highly cultivated and there is an excellent homestead. However, since you are natu- 34
rally so ill-disposed, I will never relieve you of that worry and anxiety.[a] Roscius made a very good thing of the business and got a most productive farm; what has that to do with you? Make any settlement you like as to your half share. Now he changes his tactics and tries to invent what he is unable to prove. "It was about the whole business," says he, "that you made a settlement."

The whole cause then comes to this: did Roscius make an agreement with Flavius only for his own share or for the partnership as a whole? For if 35
Roscius has received anything on account of the partnership, I admit that he ought to hand it over. "When he accepted the farm from Flavius, he made a settlement on behalf of the partnership, not for himself alone." Why then did he not give security that no one should ask a farthing[b] more? Anyone who makes an agreement for himself alone leaves to the others their right of action unimpaired; one who makes an agreement for his partners gives security that none of them shall make any further claim. Why then did it not occur to Flavius to look after his own interests? I suppose he did not know that Panurgus belonged to the partnership. He did

cietate. Sciebat. Nesciebat Fannium Roscio esse socium.—Praeclare; nam iste cum eo litem con-
36 testatam habebat. Cur igitur decidit et non restipulatur neminem amplius petiturum? cur de fundo decedit et iudicio non absolvitur? cur tam imperite facit, ut nec Roscium stipulatione alliget neque a
37 Fannio iudicio se absolvat? Est hoc primum et ex condicione iuris et ex consuetudine cautionis firmissimum et gravissimum argumentum, quod ego pluribus verbis amplecterer, si non alia certiora et clariora testimonia in causa haberem.

XIII. Et ne forte me hoc frustra pollicitum esse praedices, te, te, inquam, Fanni, ab tuis subselliis contra te testem suscitabo. Criminatio tua quae est? Roscium cum Flavio pro societate decidisse. Quo tempore? Abhinc annis xv. Defensio mea quae est? Roscium pro sua parte cum Flavio transegisse. Repromittis tu abhinc triennium Roscio. Quid? recita istam restipulationem clarius. Attende, quaeso, Piso; Fannium invitum et huc atque illuc tergiversantem testimonium contra se dicere cogo. Quid enim restipulatio clamat? QUOD A FLAVIO ABSTULERO, PARTEM DIMIDIAM INDE ROSCIO ME SOLUTURUM SPONDEO. Tua
38 vox est, Fanni. Quid tu auferre potes a Flavio, si Flavius nihil debet? quid hic porro nunc restipulatur, quod iam pridem ipse exegit? quid vero Flavius tibi daturus est, qui Roscio omne, quod debuit, dis-

[a] If he had added *neminem amplius petiturum*, he would have had Roscius's promise and also have been quit of any legal proceedings on the part of Fannius.

[b] The accuser's benches.

[c] See note on the date of the speech at end of Introduction.

know it. He did not know that Fannius was Roscius's partner. He knew it perfectly well, for he was at law with him at the time. Why then does he make a 36
settlement without requiring a counter-stipulation that no one should make any further claim?[a] Why does he retire from the farm without getting himself released from his action? Why does he manage so unskilfully as to neglect to bind Roscius by a stipulation and not to free himself in court from Fannius?
This is the first argument, most convincing and 37
weighty, which the conditions of civil law and custom in the matter of security supply; I would develop it at greater length, if I had not other evidence clearer and more conclusive in the cause itself.

XIII. But lest perchance you should say that I have promised what I cannot perform, it is you, you, I say, Fannius, whom I will rouse from your benches[b] as a witness against yourself. What is your accusation? That Roscius made a settlement with Flavius on behalf of the partnership. When? Fifteen years ago.[c] What is my defence? that Roscius made an agreement with Flavius for himself alone. Three years ago you made a counter-promise to Roscius. What? Read that counter-stipulation clearly. Listen, Piso, I beg. Against his will, shuffling backwards and forwards, Fannius is compelled by me to give evidence against himself. For what does the counter-stipulation proclaim? I PROMISE TO PAY ROSCIUS HALF OF WHAT I RECEIVE FROM FLAVIUS.
These are your own words, Fannius. What can you 38
get from Flavius, if he owes nothing? Why does Roscius now make a counter-stipulation in regard to a sum which he obtained long ago? What has Flavius to give you, since his payment to Roscius

solvit ? Cur in re tam vetere, in negotio iam confecto, in societate dissoluta nova haec restipulatio interponitur ? quis est huius restipulationis scriptor, testis arbiterque ? Tu, Piso ; tu enim Q. Roscium pro opera ac[1] labore, quod cognitor fuisset, quod vadimonia obisset, rogasti, ut Fannio daret HS ccciↄↄↄ hac condicione, ut, si quid ille exegisset a Flavio, partem eius dimidiam Roscio dissolveret. Satisne ipsa restipulatio dicere tibi videtur aperte Roscium pro se
39 decidisse ? At enim forsitan hoc tibi veniat in mentem, repromisisse Fannium Roscio, si quid a Flavio exegisset, eius partem dimidiam, sed omnino exegisse nihil. Quid tum ? Non exitum exactionis, sed initium repromissionis spectare debes. Neque si ille persequi noluit,[2] non, quod in se fuit, iudicavit Roscium suas, non societatis lites redemisse. Quid si tandem planum facio post decisionem veterem Rosci, post repromissionem recentem hanc Fanni HS ccciↄↄↄ Fannium a Q. Flavio Panurgi nomine abstulisse ? tamen diutius illudere viri optimi existimationi, Q. Rosci, audebit ?

40 XIV. Paulo ante quaerebam, id quod vehementer ad rem pertinebat, qua de causa Flavius, cum de tota

[1] ac *inserted by Müller.*
[2] *Manutius* : *Clark gives* si ille id exsequendum non iudicavit.

[a] It is generally agreed that there is a mistake in the numerals, the amount being very large. Lambinus proposed CCIↄↄIↄↄ (15,000), Manutius CCIↄↄ (10,000), Ernesti Iↄↄↄ (50,000).

[b] Roscius soon afterwards paid a first instalment (50,000 sesterces), and when Fannius brought an action against Flavius and was awarded 100,000, it would appear that Fannius and Roscius were quits, since by his restipulation Fannius promised to give Roscius half of what he got from Flavius (50,000). But Fannius denies that he got anything from Flavius and sues Roscius for the second instalment.

covered all his debts ? Why, in a matter of so long ago, in an affair which is settled and done with, in the case of a partnership that is now dissolved, why is this new counter-stipulation introduced ? Who drew up and witnessed it ? Who was the arbitrator ? You, Piso ; for it was you who requested Roscius to give Fannius 100,000 sesterces[a] to compensate him for his trouble and labour, because he had been Roscius's agent, because he had given security and appeared in court on several occasions, on condition that Fannius would pay Roscius half of what he recovered from Flavius.[b] Does not that counter-stipulation itself sufficiently prove that Roscius made an agreement for himself only ? But perhaps you may think 39
that Fannius made a counter-promise to pay Roscius half of what he might get from Flavius, but that he got nothing at all. What does that matter ? You ought to consider, not the result of the claim, but the origin of the counter-promise. Nor, if he did not want to proceed against Flavius, did he thereby, as far as it depended on him, any the less declare his opinion that Roscius had compounded for his own share only, not for the association. But what if I make it clear that, after the old agreement of Roscius and after this recent counter-promise of Fannius, Fannius recovered 100,000 sesterces from Flavius on account of Panurgus ? will he still any longer dare to scoff at the reputation of that most excellent man, Quintus Roscius ?

XIV. A little before I asked a question extremely 40
pertinent to the matter : why did Flavius, when he was making an agreement about the whole action,

lite faceret pactionem, neque satis acciperet a Roscio neque iudicio absolveretur a Fannio; nunc vero, id quod mirum et incredibile est, requiro: Quam ob rem, cum de tota re decidisset cum Roscio, HS cccIↄↄↄ separatim Fannio dissolvit? Hoc loco, Saturi, quid pares respondere, scire cupio; utrum omnino Fannium a Flavio HS cccIↄↄↄ non abstulisse an alio
41 nomine et alia de causa abstulisse. Si alia de causa, quae ratio tibi cum eo intercesserat? Nulla. Addictus erat tibi? Non. Frustra tempus contero. "Omnino," inquit, "HS cccIↄↄↄ a Flavio non abstulit neque Panurgi nomine neque cuiusquam." Si planum facio post hanc recentem stipulationem Rosci HS cccIↄↄↄ a Flavio te abstulisse, numquid causare,
42 quin ab iudicio abeas turpissime victus? Quo teste igitur hoc planum faciam? Venerat, ut opinor, haec res in iudicium. Certe. Quis erat petitor? Fannius. Quis reus? Flavius. Quis iudex? Cluvius. Ex his unus mihi testis est producendus, qui pecuniam datam dicat. Quis est ex his gravissimus? Sine controversia qui omnium iudicio comprobatus est [iudex].[1] Quem igitur ex his tribus a me testem exspectabis? petitorem? Fannius est; contra se numquam testimonium dicet. Reum? Flavius est. Is iam pridem est mortuus; si viveret, verba eius audiretis. Iudi-

[1] iudex *deleted by Orelli.*

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[a] *Addictus* was a debtor who had been made over as a bondman or servant to a creditor.

[b] Fannius claims 50,000 sesterces as a second and final instalment of the 100,000 ordered by Piso; but as Fannius got 100,000 from Flavius, and had promised to pay Roscius half what he got, Roscius does not see why he should pay Fannius a sum equal to what Fannius would have to pay him according to the agreement made before Piso. But

neither get security from Roscius nor was released from the action of Fannius? But now I want to know the meaning of something strange and incredible: why, after he had come to a settlement with Roscius about the whole affair, did he make a separate payment of 100,000 sesterces to Fannius? On this point, Saturius, I should like to know what answer you propose to make; that Fannius never got 100,000 sesterces at all from Flavius or that he got them on some other claim or for some other reason? If for 41
some other reason, what dealings had you had with him previously? None. Had he been handed over to you as a debtor?[a] No. I am wasting time uselessly. "Fannius" says he "did not get 100,000 sesterces from Flavius, neither on account of Panurgus nor anyone else." If I prove that, after this recent stipulation of Roscius, you got 100,000 sesterces from Flavius, can you give any reason why you should not leave the court defeated and disgraced?[b] By whose 42
evidence then shall I prove this? This affair, I believe, came into court. Certainly. Who was the plaintiff? Fannius. Who was the defendant? Flavius. Who was the judge? Cluvius. I must produce one of these men as a witness to say that the money was paid. Whose evidence would have the greatest weight? Indisputably, that of him who has been approved of by the general verdict [as judge]. Which of these three men, then, will you expect me to produce as a witness? The plaintiff? It is Fannius; he will never give evidence against himself. The defendant? It is Flavius; he has been dead a long time; if he were alive, you would hear him speak.

Saturius denies that his client had received this 100,000 sesterces, which Cicero tries to prove that he had (42, etc.).

cem? Cluvius est. Quid is dicit? HS ccciↄↄↄ Panurgi nomine Flavium Fannio dissolvisse. Quem tu si ex censu spectas, eques Romanus est, si ex vita, homo clarissimus est, si ex fide, iudicem sumpsisti, si ex veritate, id, quod scire potuit et debuit, dixit.
43 Nega, nega nunc equiti Romano, homini honesto, iudici tuo credi oportere! Circumspicit, aestuat, negat nos Cluvi testimonium recitaturos. Recitabimus. Erras; inani et tenui spe te consolaris. Recita testimonium T. Manili et C. Lusci Ocreae, duorum senatorum, hominum ornatissimorum, qui ex Cluvio audierunt. *TESTIMONIUM T. MANILI ET C. LUSCI OCREAE.* Utrum dicis Luscio et Manilio anne Cluvio non esse credendum? XV. Planius atque apertius dicam: Utrum Luscius et Manilius nihil de HS ccciↄↄↄ ex Cluvio audierunt, an Cluvius falsum Luscio et Manilio dixit? Hoc ego loco soluto et quieto sum animo et, quorsum recidat responsum tuum, non magnopere laboro; firmissimis enim et sanctissimis testimoniis virorum optimorum causa
44 Rosci communita est. Si iam tibi deliberatum est, quibus abroges fidem iuris iurandi, responde. Manilio et Luscio negas esse credendum? Dic, aude; est tuae contumaciae, arrogantiae vitaeque universae vox. Quid exspectas? quam mox ego Luscium et Manilium dicam ordine esse senatores, aetate grandes

[a] Possibly Cluvius was dead, although Cicero would have said so; anyhow, he was got out of the way. The evidence of the two senators was of course not so good as that of Cluvius himself would have been.

The judge? It is Cluvius. What does he say? That Flavius paid Fannius 100,000 sesterces on account of Panurgus. Consider Cluvius's position: he is a Roman knight; his life: he is a man of the greatest distinction; the confidence he inspires: you accepted him as judge; his truthfulness: he said what he could and ought to have known. Say now, say that a Roman 43
knight, an honourable man, your judge, ought not to be believed! He looks about him, he is excited, he declares that we are not going to read the evidence of Cluvius. We shall read it. You are mistaken; you are comforting yourself with a vain and feeble hope. Read the evidence of Titus Manilius and Gaius Luscius Ocrea, two senators, most accomplished men, who heard it from Cluvius.[a] EVIDENCE OF TITUS MANILIUS AND GAIUS LUSCIUS OCREA. Do you say that we ought not to believe Luscius and Manilius or Cluvius?

XV. I will speak more clearly and more frankly. Did Luscius and Manilius hear nothing from Cluvius about the 100,000 sesterces, or did Cluvius tell an untruth to Luscius and Manilius? On this point I am calm and free from anxiety. I do not care greatly what you may fall back upon in reply, for the cause of Roscius is made sure by the strongest and most sacred evidence of most excellent men. If you 44
have already made up your mind which of them you would refuse to believe on oath, answer. Do you assert that Manilius and Luscius ought not to be believed? Say so, if you dare; such words are on a par with your obstinacy, your arrogance, and your whole life. What are you waiting for? to see how long it will be before I tell you that Luscius and Manilius are senators in rank, in years old men, in

natu, natura sanctos et religiosos, copiis rei familiaris locupletes et pecuniosos? Non faciam; nihil mihi detraham, cum illis exactae aetatis severissime fructum, quem meruerunt, retribuam. Magis mea adulescentia indiget illorum bona existimatione, quam illorum severissima senectus desiderat meam laudem.

45 Tibi vero, Piso, diu deliberandum et concoquendum est, utrum potius Chaereae iniurato in sua lite an Manilio et Luscio iuratis in alieno iudicio credas. Reliquum est, ut Cluvium falsum dixisse Luscio et Manilio contendat. Quod si facit, qua impudentia est, eumne testem improbabit, quem iudicem probarit? ei negabit credi oportere, cui ipse crediderit? eius testis ad iudicem fidem infirmabit, cuius propter fidem et religionem iudicis testes compararit? quem ego si ferrem iudicem, refugere non deberet, cum testem producam, reprehendere audebit?

46 XVI. "Dicit enim," inquit, "iniuratus Luscio et Manilio." Si diceret iuratus, crederes? At quid interest inter periurum et mendacem? Qui mentiri solet, peierare consuevit. Quem ego, ut mentiatur, inducere possum, ut peieret, exorare facile potero. Nam qui semel a veritate deflexit, hic non maiore religione ad periurium quam ad mendacium perduci consuevit. Quis enim deprecatione deorum, non

[a] Cicero says it would be conceited on his part and only do him harm if he, a young and scarcely known man, were to speak patronizingly of or to eulogize men of such reputation.

character, pious and religious, in private resources, rich and wealthy? I shall not do this: I will not do prejudice to myself[a] by rendering to them the well-deserved credit of a life passed with the greatest austerity. The need of my own youth for their good opinion is greater than the longing of their austere old age for any praise of mine. It is for you, Piso, to 45
deliberate and consider well, whether you should believe Chaerea, though not on his oath, in a cause in which he is personally interested, rather than Manilius and Luscius on oath in one with which they are not concerned. There remains the alternative, for him to maintain that Cluvius lied to Luscius and Manilius. If he does this—and he is impudent enough for it—will he disapprove of the man as a witness whom he approved of as a judge? Will he say that a man ought not to be trusted, whom he himself has trusted? Will he before a judge disparage the good faith as a witness, of the man before whom as a judge because of his good faith and integrity he produced witnesses? If I should propose him as a judge, he would be bound not to reject him, and shall he dare to find fault with him, when I bring him forward as a witness?

XVI. "Well, but," says he, "Cluvius informed 46
Luscius and Manilius when he was not on oath." If he told them on oath, would you believe him? But what is the difference between a perjurer and a liar? A man who is in the habit of lying becomes used to committing perjury. If I can persuade a man to tell a lie, I shall easily be able to induce him to commit perjury. For when a man has once deviated from the truth, he has no greater scruples about being persuaded to commit perjury than to tell a lie. For who is there that is stirred by an invocation of the gods

conscientiae fide commovetur? Propterea, quae
poena ab dis immortalibus periuro, haec eadem
mendaci constituta est; non enim ex pactione ver-
borum, quibus ius iurandum comprehenditur, sed ex
perfidia et malitia, per quam insidiae tenduntur
alicui, di immortales hominibus irasci et suscensere
47 consuerunt. At ego hoc ex contrario contendo:
Levior esset auctoritas Cluvi, si diceret iuratus, quam
nunc est, cum dicit iniuratus. Tum enim forsitan
improbis nimis cupidus videretur, qui, qua de re
iudex fuisset, testis esset; nunc omnibus civibus[1]
necesse est castissimus et constantissimus esse
videatur, qui id, quod scit, familiaribus suis dicit.

48 Dic nunc, si potes, si res, si causa patitur, Cluvium
esse mentitum! Mentitus est Cluvius? Ipsa mihi
veritas manum inicit et paulisper consistere et com-
morari cogit. Unde hoc totum ductum et conflatum
mendacium est? Roscius est videlicet homo callidus
et versutus. Hoc initio cogitare coepit: "Quoniam
Fannius a me petit HS ɪↄↄↄ, petam a C. Cluvio,
equite Romano, ornatissimo homine, ut mea causa
mentiatur, dicat decisionem factam esse, quae facta
non est, HS ᴄᴄᴄɪↄↄↄ a Flavio data esse Fannio, quae
data non sunt." Est hoc principio improbi animi,
49 miseri ingenii, nulli consilii. Quid deinde? Postea-
quam se praeclare confirmavit, venit ad Cluvium.
Quem hominem? levem? Immo gravissimum.

[1] omnibus inimicis *MSS.*: omnibus civibus *Müller*: omni-
bus non iniquis *Clark*: omnibus *Madvig*.

[a] When a man says, "May the gods punish me if I lie," it is a *deprecatio deorum*. The meaning is: No one will trouble about an oath, if the dictates of conscience do not keep him from lying.

though not by the attestation of his own conscience?[a]
Because the gods punish equally the perjurer and the
liar; for it is not the form of words, in which an oath
is embodied, but the perfidy and wickedness whereby
a snare is set for someone, that excites the wrath and
indignation of the immortal gods. But I on the 47
contrary maintain that the authority of Cluvius would
have less weight if he had spoken on oath than it now
has, when he is not on oath. For then he might
perhaps appear to ill-disposed persons to be too much
of a partisan if they saw him acting as a witness in a
cause in which he had been judge; but now every
citizen must consider him to be a man of the highest
integrity and the greatest steadfastness, who tells his
own intimates what he knows.

Say now, if you can, if the fact, if the cause allows 48
you, that Cluvius lied! Cluvius lied? Truth itself
lays hands on me and compels me to stop and dwell
upon this point for a few moments. What then was
the origin of all these lies and where were they forged?
Roscius of course is a cunning and crafty man. This
is how he began to reason: "Since Fannius claims
50,000 sesterces from me, I will ask Gaius Cluvius, a
Roman knight and a man of the highest distinction,
to tell a lie for my sake, to say that an agreement was
made which was not made, that 100,000 sesterces were
given by Flavius to Fannius, which were not given."
This is the first thought of a dishonest mind, of a piti-
able disposition, of a lack of sense.[b] What next?
Having plucked up courage, he approached Cluvius. 49
What kind of man is he? a trifler? No, most serious.

[b] *nulli*: this form of the genitive appears once in Plautus and Terence.

Mobilem? Immo constantissimum. Familiarem? Immo alienissimum. Hunc posteaquam salutavit, rogare coepit blande et concinne scilicet: "Mentire mea causa, viris optimis, tuis familiaribus, praesentibus dic Flavium cum Fannio de Panurgo decidisse, qui nihil transegit; dic HS cccIↃↃↃ dedisse, qui assem nullum dedit." Quid ille respondit? "Ego vero cupide et libenter mentiar tua causa, et, si quando me vis peierare, ut paululum tu compendii facias, paratum fore scito; non fuit causa, cur tantum laborem caperes et ad me venires; per nuntium hoc,
50 quod erat tam leve, transigere potuisti." XVII. Pro deum hominumque fidem! hoc aut Roscius umquam a Cluvio petisset, si HS miliens in iudicium haberet, aut Cluvius Roscio petenti concessisset, si universae praedae particeps esset? vix me dius fidius tu, Fanni, a Ballione aut aliquo eius simili hoc et postulare auderes et impetrare posses. Quod cum est veritate falsum, tum ratione quoque est incredibile; obliviscor enim Roscium et Cluvium viros esse primarios;
51 improbos temporis causa esse fingo. Falsum subornavit testem Roscius Cluvium! Cur tam sero? cur, cum altera pensio solvenda esset, non tum, cum prima? nam iam antea HS IↃↃↃ dissolverat. Deinde, si iam persuasum erat Cluvio, ut mentiretur, cur

[a] § 20.

Pliable? No, most firm. A friend of Roscius? No, a perfect stranger. After the usual greetings, he of course began to ask Cluvius in flattering and courteous language: "Will you tell a lie to oblige me; in the presence of some of your excellent and intimate friends, say that Flavius settled with Fannius about Panurgus, although he did nothing of the kind; say that he gave him 100,000 sesterces, although he did not give him a penny." What was his answer? "Certainly, I will tell a lie for your sake gladly and with the greatest pleasure; and, if at any time you want me to commit perjury, so that you may make a little profit, you may feel sure that I shall be ready. You need not have taken all this trouble to come to me; you could have arranged so trifling a matter through a messenger."

XVII. Great heavens! would Roscius ever have 50
asked Cluvius to do this, even if he had had millions at stake in the trial, or would Cluvius have agreed to Roscius's request, even if his share were to be the whole booty? By the god of truth, you yourself, Fannius, would hardly have the audacity to demand and the power to obtain such a promise from Ballio[a] or one like him. As a matter of truth, it is false; as a matter of common sense, it is incredible: for I am forgetting Roscius and Cluvius are men of most excellent character; for the moment I am assuming that they are dishonourable. Roscius suborned 51
Cluvius as a false witness. Why was this done so late? Why did Cluvius not speak at the time the first instalment was to be paid, instead of waiting until the second was due? for Roscius had already paid 50,000 sesterces. Next, if Cluvius had been persuaded to make a false statement, why did he say

potius HS ccciↄↄↄ quam ccciↄↄↄ ccciↄↄↄ ccciↄↄↄ data dixit Fannio a Flavio, cum ex restipulatione pars eius dimidia Rosci esset? Iam intellegis, C. Piso, sibi soli, societati nihil Roscium petisse. Hoc cum sentit Saturius esse apertum, resistere et repugnare contra veritatem non audet, aliud fraudis et insidiarum in eodem vestigio deverticulum reperit.

52 "Petisse," inquit, "suam partem Roscium a Flavio confiteor, vacuam et integram reliquisse Fanni concedo; sed, quod sibi exegit, id commune societatis factum esse contendo." Quo nihil captiosius neque indignius potest dici. Quaero enim, potueritne Roscius ex societate suam partem petere necne. Si non potuit, quem ad modum abstulit? si potuit, quem ad modum non sibi exegit? nam quod sibi
53 petitur, certe alteri non exigitur. An ita est: Si, quod universae societatis fuisset, petisset, quod tum redactum esset, aequaliter omnes partirentur; nunc cum petierit, quod suae partis esset, non, quod tum abstulit, soli sibi exegit? XVIII. Quid interest inter eum, qui per se litigat, et eum, qui cognitor est datus? Qui per se litem contestatur, sibi soli petit, alteri nemo potest, nisi qui cognitor est factus. Itane vero? cognitor si fuisset tuus, quod vicisset iudicio, ferres tuum; cum[1] suo nomine petiit, quod abstulit, tibi, non

[1] cum *is supplied by Lambinus*: suo nomine MSS.

[a] A person could maintain or defend an action by his *cognitor* or *procurator*, both meaning an agent. Both parties to a suit used a special form of words in appointing a *cognitor*, and in the presence of both. It was not necessary for the *cognitor* to be present, but it was sufficient for him to give his assent to his appointment.

that Flavius had given Fannius 100,000 rather than 300,000 sesterces, since, according to the counter-stipulation, half of the sum belonged to Roscius? You can now understand, Piso, that Roscius claimed for himself alone, but nothing for the partnership. Since Saturius feels that this is quite clear, he does not venture to resist and fight against the truth, but immediately discovers another retreat for fraud and treachery. "I admit," says he, "that Roscius 52
claimed only his share from Flavius; I grant that he left Fannius's share free and untouched; but I maintain that what he obtained for himself became the common property of the partnership." No manner of reasoning can be more captious or scandalous than this. I ask: could Roscius have been able or not to claim his share in accordance with the partnership? if he could not, how did he get the money? if he could, how was it that he did not demand and get it for himself, for what is claimed for oneself is certainly not demanded for another? Is it not so? If Roscius 53
had claimed what belonged to the partnership as a whole, the money received would have been shared equally by all; now, since he demanded what belonged to his own share only, did he not demand what he then got for himself alone?

XVIII. What is the difference between a man who carries on a suit himself and one who is appointed as agent to another?[a] He who begins an action in person claims for himself only; no one, unless he has been appointed agent, can claim for another. Do you say so? If Roscius had been made your agent, you would have got as your own what he received after gaining the suit; but since he claimed in his own name, did he get what he got for you, and not for

54 sibi exegit? Quodsi quisquam petere potest alteri, qui cognitor non est factus, quaero, quid ita, cum Panurgus esset interfectus et lis contestata cum Flavio damni iniuria esset, tu in eam litem cognitor Rosci sis factus, cum praesertim ex tua oratione, quodcumque tibi peteres, huic peteres, quodcumque tibi exigeres, id in societatem recideret. Quodsi ad Roscium nihil perveniret, quod tu a Flavio abstulisses, nisi te in suam litem dedisset cognitorem, ad te pervenire nihil debet, quod Roscius pro sua parte
55 exegit, quoniam tuus cognitor non est factus. Quid enim huic rei respondere poteris, Fanni? Cum de sua parte Roscius transegit cum Flavio, actionem tibi tuam reliquit an non? Si non reliquit, quem ad modum HS cccIↄↄↄ ab eo postea exegisti? si reliquit, quid ab hoc petis, quod per te persequi et petere debes? Simillima enim et maxime gemina societas hereditatis est; quem ad modum socius in societate habet partem, sic heres in hereditate habet partem. Ut heres sibi soli, non coheredibus petit, sic socius sibi soli, non sociis petit; et quem ad modum uterque pro sua parte petit, sic pro sua parte dissolvit, heres ex ea parte, qua hereditatem adiit, socius ex
56 ea, qua societatem coiit. Quem ad modum suam partem Roscius suo nomine condonare potuit Flavio,

[a] No commentator except Long appears to notice this difficult passage (52-54). His explanation is the following. "The fact of Fannius being named as Roscius's *cognitor* in the action of Roscius against Flavius implies that Fannius acted for Roscius only and not for the partnership. If Fannius, as *cognitor*, considers that he had an interest in that suit, we must assume that Roscius's share of what Fannius might get in an action against Flavius depended on Fannius being made *cognitor* in the action of Roscius against Flavius; then, as Fannius had not made Roscius

himself? But if anyone can claim for another, but has not been appointed his agent, I ask why, after Panurgus had been killed, and an action for damages had been begun against Flavius, why it was that you were made the agent of Roscius for that action, especially as you argued that, whatever you claimed in your name, you claimed for him, and whatever you claimed and got for yourself fell to the partnership. But if nothing of what you got from Flavius would have come to Roscius, unless he had appointed you his agent in the suit, nothing of what Roscius got for his share ought to come to you, since he was not appointed your agent.[a] Now, what answer will you be able to make to this, Fannius? When Roscius made an arrangement with Flavius for his own share, did he leave you your right of action or not? If not, how did you afterwards get 100,000 sesterces from Flavius? If he did, why do you claim from Roscius what you ought to claim and try to obtain yourself? In fact, a partnership is very like an inheritance, a kind of twin sister; just as a partner has a share in a partnership, so an heir has a share in an inheritance. As an heir claims for himself alone, not for his co-heirs, so a partner claims for himself alone, not for his co-partners; and, as each claims for his own share, so he pays for his own share only, the heir in proportion to the share for which he entered on his inheritance, the partner in proportion to the share for which he entered the partnership. Just as Roscius could have given up his share in his own name to Flavius, so that you

his *cognitor* in his (Fannius's) action against Flavius he was not entitled to anything that Roscius had got in the arrangement with Flavius." But the argument remains obscure.

ut eam tu non peteres, sic, cum exegit suam partem et tibi integram petitionem reliquit, tecum partiri non debet, nisi forte tu perverso more, quod huius est, ab alio extorquere non potes, huic eripere potes. Perstat in sententia Saturius, quodcumque sibi petat socius, id societatis fieri. Quod si ita est, qua, malum, stultitia fuit Roscius, qui ex iuris peritorum consilio et auctoritate restipularetur a Fannio diligenter, ut, quod is exegisset a Flavio, dimidiam partem sibi dissolveret, siquidem sine cautione et repromissione nihilo minus id Fannius societati, hoc est Roscio, debebat?

[*Amissa sunt non pauca*]

THE ACTIONS OF FANNIUS AGAINST ROSCIUS (§§ 37; 40)

Roscius's *decisio* (agreement) with Flavius took place fifteen years before the present action (or, according to Hotman, only four years; see note on date of speech). Fannius waited for twelve years, and then brought an action before an *arbiter*, in which he claimed 50,000, being half the amount of what Roscius had received for his farm, which Fannius says belonged to him as a partner, although Cicero's object is to prove that Roscius acted for himself and not for the partnership. The account of the arbitration is obscure, and no figures are mentioned. (Various emendations of the text have been proposed in regard to them.) The result was that Piso (the

might not have the right to claim it, so, when he got his share and left you the right of claiming unimpaired, he ought not to share with you, unless perhaps, by a perversion of justice, you can rob Roscius of what belongs to him, while you cannot extort it from another. Saturius persistently maintains that whatever a partner claims for himself becomes the property of the partnership. But if this is so, confound it! what a fool Roscius was, who on the advice and authority of men learned in the law, made a precise counter-stipulation with Fannius that he should pay him half of what he got from Flavius, since, without any security or counter-promise, Fannius none the less owed it to the partnership, that is, to Roscius. . . .

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arbitrator) requested Roscius to pay Fannius 100,000 sesterces, as remuneration for the trouble taken by the latter as *cognitor* in regard to the suit, with the reservation that Fannius should pay Roscius half of what he received from Flavius. Roscius paid Fannius half the amount (50,000) awarded by the arbitrator as a first instalment. Later on, Fannius brought an action against Flavius, and was awarded 100,000 sesterces by the *iudex* Cluvius, although Fannius denies that he received anything from Flavius. In the present action, Fannius is suing for the second instalment of the arbitrator's award, although he refuses to pay half of what he himself had received from Flavius, as he agreed to do before the arbitrator.

THE THREE SPEECHES ON THE AGRARIAN LAW

INTRODUCTION

One of the chief sources of Roman revenue during republican times was the *ager publicus* or state domains in Italy. Of this public land Rome possessed a considerable amount, confiscated after victory in Italy or abroad—the amount thus confiscated being sometimes a third, sometimes a half, and, in the case of the *ager Campanus*, the whole of the confiscated territory. Towards the end of the republic some foreign princes left their domains by will to the Romans (*e.g.* Pergamum). There were different kinds of such land, which were treated in different ways.

(1) Cultivated land, which might (*a*) be sold by the quaestors (hence called *ager quaestorius*), the sale giving full rights of ownership, for which the purchasers paid a nominal rent, although in theory it remained state property; (*b*) it might be assigned in full ownership by lot among the citizens (*agri dati, assignati*), two jugera per man, which was an *heredium* and passed to his heirs. A colony was sometimes established on the spot or the allottees were incorporated in an existing colony, or they could even remain in Rome and still keep their allotments. Sometimes, after the whole had been allotted as far as there were people to share in it, what remained was let for a fixed rent, for periods varying from

one to a hundred years. For the longer periods the lessees were state-contractors (*mancipes*) who sublet it for cultivation to others who became mere tenants, the land remaining the property of the state.

(2) Uncultivated waste lands and such as had been devastated by war were generally given up to *occupatio*, as it was called, citizens being allowed to possess and farm them for their own profit. They are said to have had to pay one-tenth of the corn-land profits and one-fifth of the produce of the vineyards and fruit-trees and a small sum per head for sheep and cattle grazing upon the public pastures. Pastures were given to individuals or shared in common by the community (*compascua*) ; the tax was called *scriptura* and those who farmed it *publicani scripturarii*. These occupiers did not acquire full ownership (*dominium*) and occupation gave no rights to the holders that were valid against the state. They were merely occupiers at will (*precario*), the state reserving to itself the right of resumption when they needed the land *for some other purpose*, but they could not be dispossessed in favour of another tax-paying tenant. Although prescription (*vetustas*) could not be pleaded against the state, they were allowed to keep their occupation for generations, and would have regarded any sudden state-resumption as a kind of arbitrary confiscation. Thus Sulla's confiscation of what had come to be considered private property and grants of it to his friends and soldiers caused great indignation.

In connexion with these occupiers or *possessores*, numerous abuses soon sprang up, the administration being conducted entirely in the interest of the

wealthier members of the class. In early times they were exclusively patricians, who defrauded the state by neglecting to pay their portion of the produce or by paying less rent than their due, and by claiming as private property what was really *ager publicus*, by such devices as the shifting of landmarks. Lack of money in the treasury was made up by increased taxation, which led to complaints from those by whose efforts the lands had been won, which properly managed would have given sufficient return to meet all financial demands, or if allotted among themselves would have afforded them sufficient means of support. Evasions became common, and by the time of the Gracchi there was little revenue from this source. Before that time such possessions had increased in the hands of a few, who added field to field (*De lege agraria*, III. 14) by violence, purchase, or enclosing vacant lands. This was the origin of the *latifundia*, which according to Pliny (*Nat. Hist.* xviii. 35) were the ruin of Italy (*perdidere Italiam*), being managed by slaves to the exclusion of free labourers. The result of this was that from early republican times agrarian laws were employed by tribunes of the people and democratic leaders as formidable weapons in their campaigns.

It must be borne in mind that agrarian laws did not touch private property, but only dealt with *ager publicus* and contained provisions for giving the poorer citizens allotments from such land and regulations as to the tenure on which it should be held. The first agrarian law was that of Spurius Cassius who, when consul 486 B.C. for the third time, brought forward a law to divide a portion of the *ager publicus* amongst the plebeians. It was never carried out and

Cassius was put to death, having been accused of aspiring to royal power. The Licinian law (367) limited the amount of arable and pasture land—that no citizen should possess more than 500 jugera of *ager publicus*, nor graze more than 100 head of large and 500 of small cattle under penalty of a fine and providing for the employment of free labour. The Gracchan laws of Tiberius and his brother Gaius (133 and 122 B.C.), did not long survive the death of their authors. The allotments provided by them were made alienable and much of the *ager publicus* which had been distributed seems to have lapsed into the hands of its original possessors, for the law of 111 B.C. (*lex Thoria*) declared all such land private property.

After the resignation, however, of Sulla from the dictatorship and his retirement into private life in 79 B.C., the democratic party, which he had done his utmost to suppress, again lifted up its head and lost no opportunity of coming forward with measures intended to benefit the people, and became especially active at the time when Cicero was elected consul in 63, because they thought his colleague, Gaius Antonius Hybrida, would take their side. Dion Cassius (xxxvii. 25) states that one of the tribunes wanted the reduction of debts, and another demanded distributions of land in Italy and other subject districts. At the end of 64, on the day when the new tribunes took office (December 10), one of them, P. Servilius Rullus, proposed an agrarian law intended to place almost unlimited power in the hands of a commission of ten (called decemvirs), and so to manipulate their election so as to secure that they would act wholly in the interests of the democratic party. For it

was proposed that they should be elected by only 17 of the 35 tribes, to be selected by lot, so that the support of 9 tribes only could secure their election, while a special provision that every candidate present himself in person (*professio*) was clearly designed to exclude Pompeius, then absent with his army in the East. It was true, no doubt, that this election was to be confirmed by a *lex curiata*, but this was a mere formality, the *comitia curiata* at that time being only represented by 30 lictors. The commissioners' term of office was for five years; they could not be removed and were not subject to the veto of the tribunes.

They had the power of selling all lands which had been made state lands during the consulship of L. Sulla and Q. Pompeius[a] or afterwards outside Italy, except the domains covered by treaty, which were held by Hiempsal, King of Mauretania; in Italy, all the public forests and possessions except the Campanian and Stellatis lands which were to be distributed among 5000 colonists. They were to have the power of putting an impost on all public lands except the Recentoricus in Sicily, which enabled them to treat private lands as public and to free the public lands from burdens; further, all the booty, spoils, and crown gold possessed by the generals (with the exception of Pompeius) unless it had been spent on a public memorial or paid into the exchequer was to be handed over to them. The money thus acquired was to be employed in purchasing land in Italy for distribution amongst the Roman people.

Such a law would not only exhaust the finances of the exchequer, increase taxation, and cause public

[a] 88 B.C.

lands to disappear, but threatened to put excessive power into the hands of the decemvirs. Cicero at the first meeting of the senate on January 1, 63, on the first day of his consulship, rose to point out the danger of such a proposal.

THE THREE SPEECHES

I. (Before the Senate)

The first part of the speech is lost. This probably contained the *exordium*, in which Cicero thanked the senate for the honour conferred upon him by his election as consul ; a statement of the nature of the law proposed by Rullus ; the creation and powers of the ten commissioners (decemvirs).

1. How money is to be procured.

(*a*) Permission is given to sell things mentioned in decrees of the senate in 81 B.C. and afterwards. [Here the speech as we have it begins.]
(*b*) The sale of what became the public property of the Roman people after 88 B.C. is ordered (1).
(*c*) The sale of certain private assets (*vectigalia*) within and outside Italy is ordered (2-6).
(*d*) Permission is given to sell wherever the decemvirs please (7). Their presence will cause great alarm among foreign nations (8, 9).
(*e*) They are allowed to investigate the conditions of public and private land outside Italy, with two exceptions—the *ager Recentoricus* in Sicily, and the land in the possession of Hiempsal in Africa (10, 11).

(*f*) All booty acquired by commanders, unless it has been spent upon the erection of a memorial or paid into the treasury, is to be given up to the decemvirs, except in the case of Gnaeus Pompeius (12, 13).

2. The purchase of land (14, 15).

3. The settlement of colonies (16, 17).

4. The settlement of a colony in Capua (17-22). Digression concerning the dignity of the republic (18), the wisdom of their ancestors in dealing with the question (19, 20), the danger of such a colony to the state (21, 22). Cicero's plan for carrying out his office as consul (22-26); his warning to the rest of the tribunes (26).

II. (Before the popular Assembly)

Exordium: (*a*) Cicero thanks the people for the honour bestowed upon him (1-4); (*b*) his plan for carrying out his office as consul (5, 6). He will be brave, cautious, and "popular"; the meaning of the word "popular"; peace and freedom are popular; bounties and promises of land are not (7-10). How the agrarian law was brought forward; its general effect and character (11-16).

Critical Examination of the law (16-97).

(*a*) The decemvirs (16-32). Their election by 17 of the 35 tribes (16-19); Rullus to preside at the *comitia* (20-22). An exception in the case of Pompeius to prevent his appointment as one of the decemvirs (23-25).

(*b*) Their functions and equipment (26-32) confirmed by the *lex curiata* and other attributes.

INTRODUCTION

What the agrarian law lays down (32-99)

1. On procuring money (35-62).

(*a*) It permits the sale of what was decided by decree of the senate should be sold in the year 81 and afterwards (35-37).

(*b*) It orders the sale of what became the property of the Roman people outside Italy after the year 88 (38-46), which includes all peoples (39-44) and is a serious matter for the allies and an excessive measure (45, 46).

(*c*) It permits the sale both inside and outside Italy of certain *vectigalia* with special reference to any new *vectigalia* acquired by Pompeius (47-55).

(*d*) It permits the sales to take place wherever the decemvirs think fit (55, 56).

(*e*) It allows the decemvirs to conduct (both inside and outside Italy) an investigation of all public and private land and imposes a tax upon the former (56, 57), two exceptions being the *ager Recentoricus* in Sicily and the lands in possession of Hiempsal in Africa (57-59).

(*f*) The booty acquired by commanders, unless it has been spent upon the erection of a memorial or paid into the treasury, is to be given up to the decemvirs, except in the case of Gnaeus Pompeius (59-62).

2. On the purchase of land (62-72).

(*a*) Too much power is given to the decemvirs (63-65).

(*b*) Land is bought contrary to the custom of our ancestors (65).

(*c*) The nature of the lands ought certainly to be defined (66, 67).
(*d*) The Sullan assignations will be bought (68-70).
(*e*) Unhealthy lands will be bought (70, 71).
(*f*) The money will remain with the decemvirs and you will get no land (71, 72).

3. On the settlement of colonies. Colonies should be defined—their nature and the kind of colonies to be sent. The liberty of the Roman people will be destroyed by their foundation (73-75).

4. On the settlement of a colony at Capua (76-97).

What benefit will it be to the Roman people? The people will accept nothing, because the town itself cannot hold 5000 men, and the decemvirs will ultimately become possessors of the land (76-79); and also because their best source of revenue will be lost, and a most worthy people will be driven from their homes (80-85).

On the dignity of the Roman people (86-97).

Two digressions: (*a*) on the wisdom of our ancestors in dealing with Corinth, Carthage, and Capua (86-91); (*b*) on the colony settled in Capua by the *lex Iunia* (92-94).

Short summary of the law (98, 99). Cicero promises he will do what he can to prevent its being passed (100-103).

III. (Before the Popular Assembly)

Cicero remarks a slight change in public feeling towards him (1, 2).

This is probably due to the false accusation that he is defending the Sullan possessors (3).

In reality, they are defended by Rullus himself (3-14).

(*a*) By section 40 all their possessions are confirmed (4-8).
(*b*) The best title is assigned to them (8, 9).
(*c*) New assignments are made (10-12).
(*d*) The law is proposed in favour of Rullus's father-in-law. Cicero himself is a defender of the republic (15, 16).

According to a letter to Atticus (ii. 1. 3) Cicero appears to have delivered a fourth short speech on the same subject which he wrote down, as he expressly there mentions two ἀποσπασμάτια (fragments) *legis agrariae*, in addition to the two longer speeches in the senate and before the assembly.

Remarks on the Bill of Rullus

This bill was introduced by Rullus, but the real author of it is generally supposed to have been Caesar. The extraordinary powers granted to the commissioners; the proposer's obvious desire to limit the power of Pompey and his virtual exclusion from the chance of being made a commissioner by the rule that candidates must make an application (*professio*) in person; the method of choosing the commissioners; and the plan for raising the vast sum of money required for purchasing the land on which to found colonies, were certain to arouse Cicero's anger, as a new recruit to the senatorial party. Having formerly been a moderate democrat, he now came forward as the supporter of the *nobiles*, and had been elected consul in spite of his being a

"new man" (*novus homo*), none of his family having previously held a curule office.

The general opinion of modern historians, although they admire its subtlety and cleverness, is that the bill was merely a sham, introduced by Rullus, a man of straw, who neither expected nor indeed wished it to pass. Its avowed object was the relief of poverty and getting rid of the surplus population of Rome, an idea which was good in itself, but which it was easy for Cicero to set the people against by pointing out to them that they would lose their corn-doles and shows, and would have to exchange them for strenuous toil and labour if they intended to make a living on the land.

Dr. E. G. Hardy, in an important and exhaustive paper in the *Journal of Philology*, in which he combats some of the views of W. E. Heitland in his *Roman Republic*, differs from the general view, and finally comes to the following conclusion: "So far from containing the mere dreams of madmen, the measure was a singularly cool and adroit piece of statecraft, providing the popular leaders with not one but several *points d'appui* against the threatened predominance of Pompey and at the same time containing schemes for the improvement of agrarian conditions."

INTRODUCTION

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DE LEGE AGRARIA ORATIO PRIMA CONTRA P. SERVILIUM RULLUM TR. PLEB. IN SENATU

1 I. . . . quae res aperte petebatur, ea nunc occulte cuniculis oppugnatur. Dicent enim decemviri, id quod et dicitur a multis et saepe dictum est, post eosdem consules regis Alexandri testamento regnum illud populi Romani esse factum. Dabitis igitur Alexandriam clam petentibus iis, quibus apertissime pugnantibus restititis? Haec, per deos immortales! utrum esse vobis consilia siccorum an vinulentorum somnia et utrum cogitata sapientium an optata furio-
2 sorum videntur? Videte nunc, proximo capite ut impurus helluo turbet rem publicam, ut a maioribus nostris possessiones relictas disperdat ac dissipet, ut sit non minus in populi Romani patrimonio nepos quam in suo. Perscribit in sua lege vectigalia, quae decemviri vendant, hoc est proscribit auctionem publicorum bonorum. Agros emi vult, qui dividantur;

[a] L. Sulla and Q. Pompeius (88 B.C.).

[b] Alexandria and Egypt. The will, if there was one, was never acted upon by the senate. But there is much dispute whether Alexander I. (*d.* 88), or II. (*d.* 81), is referred to. Mommsen favours the second alternative, chiefly because Alexander II. was the last genuine Lagid, "since it was always by the last scion of the legitimate ruling family that Rome was appointed heir, as in the similar cases of Pergamum, Cyrene, and Bithynia" (*Hist. of Rome*, iv. p. 318 note). In xvi. 41 he is called Alexas, whom some have identified with a third king, who died about 65.

ON THE AGRARIAN LAW I

Delivered in the Senate against P. Servilius Rullus, Tribune of the People

I. . . . What was then aimed at openly is now 1
being secretly undermined. For the decemvirs will say, what is said by many and has often been said, that, after the consulship of the same men,[a] that kingdom[b] became the Roman people's by the will of King Alexander. Will you therefore give Alexandria to them when they ask for it secretly, although when they fought against you quite openly you resisted them? By the immortal gods! do such ideas appear to you to be sober men's plans or the dreams of men drunk with wine? do they look like the deliberate opinions of wise men or the raving wishes of mad-
men? See now, in the next article of the law, how 2
the infamous glutton is stirring up trouble in the republic, how he is ruining and squandering the possessions left by our ancestors, how he is as big a spendthrift of the inheritance of the Roman people as of his own. In his law he makes a list of certain sources of revenue, which the decemvirs may sell, that is, he is putting up a notice of the sale of what belongs to the State. He wishes lands to be bought for dis-

quaerit pecuniam. Videlicet excogitabit aliquid atque adferet. Nam superioribus capitibus dignitas populi Romani violabatur, nomen imperii in commune odium orbis terrae vocabatur, urbes pacatae, agri sociorum, regum status decemviris donabantur; nunc
3 praesens certa pecunia numerata quaeritur. Exspecto, quid tribunus plebis vigilans et acutus excogitet. "Veneat," inquit, "silva Scantia." Utrum tandem hanc silvam in relictis possessionibus an in censorum pascuis invenisti? Si quid est, quod indagaris, inveneris, ex tenebris erueris, quamquam iniquum est, tamen consume sane, quod commodum est, quoniam quidem tu attulisti; silvam vero tu Scantiam vendas nobis consulibus atque hoc senatu? tu ullum vectigal attingas, tu populo Romano subsidia belli, tu ornamenta pacis eripias? Tum vero hoc me inertiorem consulem iudicabo quam illos fortissimos viros, qui apud maiores nostros fuerunt, quod, quae vectigalia illis consulibus populo Romano parta sunt, ea me consule ne retineri quidem potuisse iudica-
4 buntur. II. Vendit Italiae possessiones ex ordine omnes. Sane est in eo diligens; nullam enim praetermittit. Persequitur in tabulis censoriis totam Siciliam; nullum aedificium, nullos agros relinquit. Audistis auctionem populi Romani proscriptam a tri-

[a] Not a fixed sum, as *certa pecunia* so often means (*e.g.* in *Pro Roscio Comoedo*, § 10 and elsewhere).

[b] *Relictae possessiones* are lands not appropriated, not marked out, because they were worthless.

[c] *Cf.* Pliny, *Nat. Hist.* xviii. 11 "etiamnunc in tabulis censoriis pascua dicuntur omnia, ex quibus populus reditus habet."

[d] It is uncertain where this was—perhaps in Campania.

[e] Meaning all the public land in Sicily entered in the censors' registers.

tribution; he wants money. I suppose he will think out some plan and bring it forward. For in the former articles the dignity of the Roman people was violated, the name of our realm aroused the common hatred of all the world, cities that had been pacified, the lands of our allies, the status of kings, were presented to the decemvirs; now he wants a certain sum [a] in cash paid down on the spot. I am waiting to see what 3
our watchful and sagacious tribune of the people is thinking out. "Let the Scantian forest be sold," says he. Did you, I ask, find this forest in the list of neglected possessions [b] or in the pasture registers of the censors? [c] If there is anything which you have hunted out, discovered, dug out of the darkness, although it is unfair, yet make away with it all the same, as happens to be convenient, since *you* brought it forward; but are *you* then to sell the Scantian forest [d] as long as we are consuls and this senate exists? are *you* then to lay hands on any of the imposts? are *you* then to rob the Roman people of their support in war, of their ornaments during peace? Then indeed I shall judge myself to be a less energetic consul than those bravest of men in the times of our ancestors, because it will be thought that the revenues, which were obtained for the Roman people during their consulships, cannot even be retained when I am consul.

II. He is selling all the public property in Italy 4
item by item. No doubt he is busy about that, for he does not let a single item pass. He searches through the whole of Sicily [e] in the censors' registers; he leaves no building, no lands unnoticed. You have heard the sale of what belongs to the Roman people publicly advertised by a tribune of the people,

buno plebis, constitutam in mensem Ianuarium, et, credo, non dubitatis, quin idcirco haec aerarii causa non vendiderint ii, qui armis et virtute pepererunt, ut esset, quod nos largitionis causa venderemus.

5 Videte nunc, quo adfectent iter apertius quam antea. Nam superiore parte legis quem ad modum Pompeium oppugnarent, a me indicati sunt; nunc iam se ipsi indicabunt. Iubent venire agros Attalensium atque Olympenorum (hos populo Romano *P.* Servili, fortissimi viri, victoria adiunxit), deinde agros in Macedonia regios, qui partim T. Flaminini, partim L. Pauli, qui Persen vicit, virtute parti sunt, deinde agrum optimum et fructuosissimum Corinthium, qui L. Mummi imperio ac felicitate ad vectigalia populi Romani adiunctus est, post autem agros in Hispania apud Carthaginem novam duorum Scipionum eximia virtute possessos; tum [vero] ipsam veterem Carthaginem vendunt, quam P. Africanus nudatam tectis ac moenibus sive ad notandam Carthaginiensium calamitatem sive ad testificandam nostram victoriam sive oblata aliqua religione ad aeternam hominum
6 memoriam consecravit. His insignibus atque infulis

[a] In Pamphylia (modern Adalia) on the south coast of Asia Minor. Olympus was a town near by.

[b] P. Servilius Vatia Isauricus, consul 79 B.C., was sent into Cilicia and Pamphylia and subdued the Isaurians.

[c] T. Flamininus defeated Philip, king of Macedonia, in the battle of Cynoscephalae in 197; L. Paulus brought the war against Perses, the last king of Macedonia, to an end by his victory at Pydna, in 168.

[d] Consul 146, when he won the name of Achaicus by conquering Greece and setting up the Roman province of Achaia. Having defeated the Achaean league, he entered Corinth, which he gave up to the pillage of his soldiers. He was entirely ignorant of the masterpieces of Greek art, most of which he sold to the king of Pergamum.

arranged for the month of January, and you have no doubt, I imagine, that the reason why those who won it by the valour of their arms did not sell it for the sake of the treasury, was that we might have something that we could sell for the sake of bribery.

Now mark what they would be at more openly 5
than before. For how, in the early part of the law, they attacked Pompeius, information has been given about them by me; they shall now give information about themselves. They order the lands of the inhabitants of Attalia[a] and Olympus to be sold, towns which the victory of the gallant Publius Servilius[b] added to the dominion of the Roman people; next, the royal territories in Macedonia, acquired by the valour partly of Titus Flamininus,[c] partly of Lucius Paulus,[c] who conquered Perses; next, that most excellent and fruitful land of Corinth, which by the successful campaign of L. Mummius[d] was added to the revenues of the Roman people; and afterwards the lands in Spain near New Carthage, which became Roman possessions by the distinguished valour of the two Scipios[e]; then they sell old Carthage itself, which Publius Africanus consecrated to be eternally remembered, stripped of its buildings and walls, either to mark the disaster to the Carthaginians, or as evidence of our victory, or after some religious ceremony had been enjoined.[f] After 6
the sale of these distinctions and jewels of our crown,[g]

[e] The brothers Gnaeus and Publius Scipio, who fell in Spain fighting against the Carthaginians.

[f] Or, "after some religious token had been vouchsafed to him."

[g] *Infulae* were woollen fillets, worn upon the forehead to indicate religious consecration.

imperii venditis, quibus ornatam nobis maiores nostri rem publicam tradiderunt, iubent eos agros venire, quos rex Mithridates in Paphlagonia, Ponto Cappadociaque possederit. Num obscure videntur prope hasta praeconis insectari Cn. Pompei exercitum, qui venire iubeant eos ipsos agros, in quibus ille etiam nunc bellum gerat atque versetur?

7 III. Hoc vero cuius modi est, quod eius auctionis, quam constituunt, locum sibi nullum definiunt? Nam decemviris, quibus in locis ipsis videatur, vendendi potestas lege permittitur. Censoribus vectigalia locare nisi in conspectu populi Romani non licet; his vendere vel in ultimis terris licebit? At hoc etiam nequissimi homines consumptis patrimoniis faciunt, ut in atriis auctionariis potius quam in triviis aut in compitis auctionentur; hic permittit sua lege decemviris, ut, in quibus commodum sit tenebris, ut, in qua velint solitudine, bona populi Romani possint diven-
8 dere. Iam illa omnibus in provinciis, regnis, liberis populis quam acerba, quam formidolosa, quam quaestuosa concursatio decemviralis futura sit, non videtis? Hereditatum obeundarum causa quibus vos legationes dedistis, qui et privati et privatum ad negotium exierunt non maximis opibus neque summa auctoritate praediti, tamen auditis profecto, quam graves eorum

[a] The sign of an auction, stuck in the ground, originally a token of booty gained in battle. The idea is that they were anxious to get hold of all that he won in order to sell it at once.

[b] See *Pro Quinctio*, iii. 12.

[c] *Legatio* = *legatio libera*, a free or nominal commission, given to a senator who wished to visit the provinces. He had lictors to attend him and was entitled to demand various

which adorned this commonwealth that our ancestors have handed down to us, they order those lands to be sold, which King Mithridates possessed in Paphlagonia, Pontus, and Cappadocia. Can there be any shadow of doubt that they almost seem to make an attack upon the army of Pompeius with the crier's spear,[a] when they bid you put up for sale those very fields in which he is even now waging war and where he is engaged?

III. But what of their not definitely fixing a place 7
for the auction which they are arranging? For the decemvirs are allowed by the law to sell wherever they think fit. The censors may not let the farming of the revenues except in the sight of the Roman people; shall these men be allowed to sell them even at the ends of the earth? But even the most depraved of men, after their patrimony has been wasted, are in the habit of selling their property in the auctioneers' halls[b] rather than in the highways and cross-roads; whereas this man allows the decemvirs to sell piecemeal the property of the Roman people in whatever obscurity it suits them or in whatever lonely place they choose. Do you not see how harsh, how terrible, 8
how profitable to the decemvirs that journeying to and fro is bound to be throughout the provinces, kingdoms, and free peoples? You have doubtless heard how great a burden is generally imposed upon our allies by the arrival of those to whom you have given a free mission[c] for the sake of entering upon an inheritance, who left the city as private individuals on private business, with no large resources nor in-

things for his use. This naturally led to many abuses and one of Caesar's laws was intended to do away with or limit their privileges, but the custom still persisted under the empire.

9 adventus sociis nostris esse soleant. Quam ob rem quid putatis impendere hac lege omnibus gentibus terroris et mali, cum immittantur in orbem terrarum decemviri summo cum imperio, summa cum avaritia infinitaque omnium rerum cupiditate? quorum cum adventus graves, cum fasces formidolosi, tum vero iudicium ac potestas erit non ferenda; licebit enim, quod videbitur, publicum iudicare, quod iudicarint, vendere. Etiam illud, quod homines sancti non facient, ut pecuniam accipiant, ne vendant, tamen id iis ipsum per legem licebit. Hinc vos quas spoliationes, quas pactiones, quam denique in omnibus locis nundinationem iuris ac fortunarum fore putatis?
10 Etenim, quod superiore parte legis praefinitum fuit, "Sulla et Pompeio consulibus," id rursus liberum infinitumque fecerunt. IV. Iubet enim eosdem decemviros omnibus agris publicis pergrande vectigal imponere, ut idem possint et liberare agros, quos commodum sit, et, quos ipsis libeat, publicare. Quo in iudicio perspici non potest utrum severitas acerbior an benignitas quaestuosior sit futura.

Sunt tamen in tota lege exceptiones duae non tam iniquae quam suspiciosae. Excipit enim in vectigali imponendo agrum Recentoricum Siciliensem, in vendendis agris eos agros, de quibus cautum sit foedere.
11 Hi sunt in Africa, qui ab Hiempsale possidentur. Hic quaero, si Hiempsali satis est cautum foedere et Re-

[a] *Homines sancti* may possibly be used ironically of the decemvirs.

[b] 88 B.C.; *cf.* § 38.

[c] See II. xxi. 57.

vested with supreme authority. For this reason 9
what terror and calamity do you think are hanging over the head of all nations as a result of this law, when decemvirs are let loose on the world with supreme power, excessively avaricious, and whose inordinate desire for everything is unlimited? Their arrival will be burdensome, their symbols of authority terrible, their judicial and arbitrary power will be unbearable; for they will be allowed to declare whatever they please to be public property, and to sell what they have so declared. Even the thing which men of integrity[a] will not do—take money for not selling, that very thing they will be allowed to do by the law. As the result what robberies, what bargainings, lastly, what trafficking in the law and men's fortunes do you think will be rife everywhere?
For what was definitely prescribed in the earlier part 10
of the law, when Sulla and Pompeius were consuls,[b] they have again made unrestricted and unlimited. IV. For it orders the same decemvirs to impose a very high tax on all public lands, so that they may be able to free any lands from it that they choose, and to declare any that they please to be public property. In making this decision one cannot see whether their severity is likely to be harsher or their generosity more profitable.

Two exceptions in the law, however, are suspicious rather than unfair. For in imposing the tax an exception is made in the case of the Recentoric territory[c] in Sicily, and in selling the lands, of those as to which provision has been made by treaty. The latter are in Africa and are in the possession of Hiempsal. Here 11
I ask, if Hiempsal is sufficiently safeguarded by the treaty and the Recentoric territory is private property,

centoricus ager privatus est, quid attinuerit excipi; sin et foedus illud habet aliquam dubitationem et ager Recentoricus dicitur non numquam esse publicus, quem putet existimaturum duas causas in orbe terrarum repertas, quibus gratis parceret? Numquisnam tam abstrusus usquam nummus videtur, quem non architecti huiusce legis olfecerint? Provincias, civitates liberas, socios, amicos, reges denique exhauriunt, admovent manus vectigalibus populi Romani. Non
12 est satis. Audite, audite vos, qui amplissimo populi senatusque iudicio exercitus habuistis et bella gessistis: quod ad quemque pervenerit ex praeda, ex manubiis, ex auro coronario, quod neque consumptum in monumento neque in aerarium relatum sit, id ad decemviros referri iubet! Hoc capite multa sperant; in omnes imperatores heredesque eorum quaestionem suo iudicio comparant, sed maximam pecuniam se a Fausto ablaturos arbitrantur. Quam causam suscipere iurati iudices noluerunt, hanc isti decemviri suscepere: idcirco a iudicibus fortasse praetermissam
13 esse arbitrantur, quod sit ipsis reservata. Deinde etiam in reliquum tempus diligentissime sancit, ut, quod quisque imperator habeat pecuniae, protinus ad decemviros referat. Hic tamen excipit Pompeium simillime, ut mihi videtur, atque ut illa lege, qua

[a] *Praeda* is the booty itself, *manubiae* the money obtained from the sale of it.

[b] Originally a golden crown given to a victorious general, to be carried before him in his triumph at Rome; afterwards, a present of money.

[c] The son of the dictator. His enemies threatened to prosecute him to make him return the money to which his father had helped himself, but the senate always opposed an inquiry. One of the tribunes charged him in 66; Cicero, who was praetor, opposed this (see *Pro Cluentio*, xxxv. 94).

what was the use of an exception being made? But if there is any uncertainty in the treaty, and the Recentoric land is sometimes said to be public property, who does he suppose will imagine that only two things have been found in the whole world such that he spared them for nothing? Does any coin ever seem so carefully hidden that the authors of this law have not smelt it out? They are draining the provinces, the free cities, our allies and friends, and lastly, the kings: they are laying violent hands upon the revenues of the Roman people. That is not enough. Listen, listen, you who have commanded 12
armies and waged wars with the fullest approval of the people and senate: Whatever shall come to anyone by way of booty,[a] spoils, presents of gold,[b] and whatever has neither been spent on a memorial nor paid into the treasury, is ordered to be paid to the decemvirs! From this article they hope much; they are arranging an investigation according to their own judgement into the affairs of all the generals and their heirs, but they think that they will obtain the largest sum of money from Faustus.[c] A cause which judges on their oath were unwilling to undertake was undertaken by those decemvirs; perhaps they think that it was passed over by the judges as being reserved for themselves. Next, it most carefully 13
ordains in regard to the future that each general shall immediately pay to the decemvirs whatever money he has. Yet here he excepts Pompeius, in much the same way, as it seems to me, as in that law,[d] by which

[d] The *lex Papia*, 65 B.C., by which foreigners were expelled from Rome. Nothing further is known of Glaucippus, so that it can only be conjectured that his case was analogous to that of Pompeius.

peregrini Roma eiciuntur, Glaucippus excipitur. Non enim hac exceptione unus adficitur beneficio, sed unus privatur iniuria. Sed cui manubias remittit, in huius vectigalia invadit. Iubet enim pecunia, si qua post nos consules ex novis vectigalibus recipiatur, hac uti decemviros. Quasi vero non intellegamus haec eos vectigalia, quae Cn. Pompeius adiunxerit, vendere cogitare.

14 V. Videtis iam, patres conscripti, omnibus rebus et modis constructam et coacervatam pecuniam decemviralem. Minuetur huius pecuniae invidia; consumetur enim in agrorum emptionibus. Optume. Quis ergo emet agros istos? Idem decemviri; tu, Rulle, (missos enim facio ceteros) emes, quod voles, vendes, quod voles; utrumque horum facies, quanti voles. Cavet enim vir optimus, ne emat ab invito. Quasi vero non intellegamus ab invito emere iniuriosum esse, ab non invito quaestuosum. Quantum tibi agri vendet, ut alios omittam, socer tuus, et, si ego eius aequitatem animi probe novi, vendet non invitus? Facient idem ceteri libenter, ut possessionis invidiam pecunia commutent, accipiant, quod cupiunt, dent, quod retinere vix possunt.

15 Nunc perspicite omnium rerum infinitam atque intolerandam licentiam. Pecunia coacta est ad agros

[a] The phrase is bitterly ironical. He held much land which he obtained in Sulla's time.

foreigners are expelled from Rome, while Glaucippus is excepted. For this exception is not a case of one man being kindly treated, but of one man being freed from an injustice. But the law attacks the revenues of the same man whose spoils it leaves alone. For it orders the decemvirs to have the use of any money received from fresh revenues after our consulship. As if we do not understand that it is the fresh revenues acquired by Gnaeus Pompeius that they are thinking of selling!

V. You see now, conscript fathers, that the money 14 of the decemvirs is heaped and piled up by the aid of all kinds of imposts and ways of collecting money. "The unpopularity of this wealth will be lessened by its being spent in purchasing lands." Excellent! Who then is going to buy those lands? The same decemvirs; you, Rullus (I say nothing about the rest), will buy what you like and you will sell what you like; both of them you will do at any price you like. For that excellent man takes care not to buy from one who is unwilling to sell. As if we do not understand that it is unprofitable to a man to buy from him if he does not want to sell, but it is profitable to buy from one who wants to sell. To say nothing about the others, how much land will your father-in-law sell you? who, if I rightly understand his impartial temper,[a] will not be unwilling to sell. The rest will gladly do the same, to change for money the unpopularity arising from their possession of land, to receive what they passionately desire, to give away what they find difficult to retain.

Now observe the unlimited and intolerable license 15 of all these provisions. Money has been got together for buying lands; moreover, they will not be bought

emendos ; ii porro ab invitis non ementur. Si consenserint possessores non vendere, quid futurum est ? Referetur pecunia ? Non licet. Exigetur ? Vetat. Verum esto ; nihil est, quod non emi possit, si tantum des, quantum velit venditor. Spoliemus orbem terrarum, vendamus vectigalia, effundamus aerarium, ut locupletatis aut invidiae aut pestilentiae possessoribus agri tamen emantur.

16 Quid tum ? quae erit in istos agros deductio, quae totius rei ratio atque descriptio ? " Deducentur," inquit, " coloniae." Quo ? quorum hominum ? in quae loca ? Quis enim non videt in coloniis esse haec omnia consideranda ? Tibi nos, Rulle, et istis tuis harum omnium rerum machinatoribus totam Italiam inermem tradituros existimasti, quam praesidiis confirmaretis, coloniis occuparetis, omnibus vinclis devinctam et constrictam teneretis ? Ubi enim cavetur, ne in Ianiculo coloniam constituatis, ne urbem hanc urbe alia premere atque urgere possitis ? " Non faciemus," inquit. Primum nescio, deinde timeo, postremo non committam, ut vestro beneficio potius quam nostro
17 consilio salvi esse possimus. VI. Quod vero totam Italiam vestris coloniis complere voluistis, id cuius modi esset, neminemne nostrum intellecturum existimastis ? Scriptum est enim : " QUAE IN MUNI-

[a] Referring to public land either purchased during the Sullan proscriptions, or that was notoriously unhealthy.

[b] Caesar, who was really at the back of Rullus, and Crassus.

[c] The hill facing Rome on the opposite side of the Tiber.

from those who do not want to sell. But if the owners agree not to sell, what will happen ? Will the money be repaid into the treasury ? It is not allowed. Will it be demanded from the decemvirs ? That is forbidden. But suppose that it is ; there is nothing that cannot be bought, if you give as much as the vendor wants. Let us despoil the world, let us sell the revenues, let us drain the treasury in order that, no matter what happens, the " possessors " of an ill name or a plague may be made wealthy by the purchase.[a]

What then ? what kind of settlement will be made 16
in those lands ? what will be the method and arrangement of the whole affair ? " Colonies will be settled there," he says. Where ? of what kind of men ? in what places ? For who can fail to see that all these things have to be taken into consideration in the matter of colonies ? Did you, Rullus, think that we should hand over to you and your engineers[b] of all these schemes the whole of Italy unarmed, that you might strengthen it with garrisons, occupy it with colonies, and hold it bound and fettered by every kind of chain ? For where is there any guarantee against your establishing a colony on the Janiculum,[c] against your being able to press and beset this city by another ? " We shall not do that," says he. First, I am not so sure of that ; secondly, I am afraid ; lastly, I will never act so as to leave our chance of safety to depend more upon your kindness than upon our own wisdom.

VI. Did you think that none of us would under- 17
stand what kind of a plan was intended in your wish to fill the whole of Italy with your colonies ? For it is written : " THE DECEMVIRS SHALL SETTLE ANY

CIPIA QUASQUE IN COLONIAS DECEMVIRI VELINT, DEDUCANT COLONOS, QUOS VELINT, ET IIS AGROS ASSIGNENT, QUIBUS IN LOCIS VELINT," ut, cum totam Italiam militibus suis occuparint, nobis non modo dignitatis retinendae, sed ne libertatis quidem recuperandae spes relinquatur.

18 Atque haec a me suspicionibus et coniectura coarguuntur. Iam omnis omnium tolletur error, iam aperte ostendent sibi nomen huius rei publicae, sedem urbis atque imperii, denique hoc templum Iovis optumi maxumi atque hanc arcem omnium gentium displicere. Capuam deduci colonos volunt, illam urbem huic urbi rursus opponere, illuc opes suas deferre et imperii nomen transferre cogitant. Qui locus propter ubertatem agrorum abundantiamque rerum omnium superbiam et crudelitatem genuisse dicitur, ibi nostri coloni delecti ad omne facinus a decemviris collocabuntur, et, credo, qua in urbe homines in vetere dignitate fortunaque nati copiam rerum moderate ferre non potuerunt, in ea isti vestri satellites modeste insolentiam suam continebunt.

19 Maiores nostri Capua magistratus, senatum, consilium commune, omnia denique insignia rei publicae sustulerunt, neque aliud quicquam in urbe nisi inane nomen Capuae reliquerunt non crudelitate (quid enim illis fuit clementius, qui etiam externis hostibus victis sua saepissime reddiderunt?), sed consilio, quod videbant, si quod rei publicae vestigium illis moenibus

[a] The Capuans were said to look on at gladiatorial combats while feasting (Livy, ix. 40).

COLONISTS THEY LIKE IN WHATEVER MUNICIPAL TOWNS AND COLONIES THEY CHOOSE, AND ASSIGN THEM LANDS WHEREVER THEY PLEASE," so that, after they have occupied the whole of Italy with their soldiery, we may have little hope left of retaining our dignity, and still less of recovering our independence. And this much is established by me on suspicion and conjecture. Now every chance of mistake on every 18 side shall be removed; now they shall openly show that the name of this republic, the seat of our city and empire, lastly, that this temple of Jupiter best and greatest and this citadel of all nations meets with their disapproval. To Capua they would have colonists conducted; that is the city they would have once more in opposition to this city; this is whither they would remove their wealth and the name of our empire. In a place which, owing to the fertility of its lands and abundance of all productions, is said to have given birth to pride and cruelty [a]—it is there that our colonists, chosen for every kind of crime, will be settled by the decemvirs; and, I suppose, in a city in which men, born to long-standing rank and fortune, have proved themselves unable to bear with moderation their abundance of everything, in that city your henchmen will be able to curb their insolence. In Capua our ancestors abolished the 19 magistrates, the senate, the popular assembly and all the marks of the republic, leaving nothing else in the city except the empty name of Capua, not out of cruelty (for who were ever more lenient than those who frequently returned their property even to enemies outside Italy who had been conquered by them?), but from prudence; for they saw that, if any trace of a republic should still be contained within

contineretur, urbem ipsam imperio domicilium praebere posse; vos haec, nisi evertere rem publicam cuperetis ac vobis novam dominationem comparare, credo, quam perniciosa essent, non videretis. VII.
20 Quid enim cavendum est in coloniis deducendis? Si luxuries, Hannibalem ipsum Capua corrupit, si superbia, nata inibi esse haec ex Campanorum fastidio videtur, si praesidium, non praeponitur huic urbi ista colonia, sed opponitur. At quem ad modum armatur, di immortales! Nam bello Punico quicquid potuit Capua, potuit ipsa per sese; nunc omnes urbes, quae circum Capuam sunt, a colonis per eosdem decemviros occupabuntur; hanc enim ob causam permittit ipsa lex, in omnia, quae velint, oppida colonos ut decemviri deducant, quos velint. Atque his colonis agrum Campanum et Stellatem campum dividi iubet.
21 Non queror deminutionem vectigalium, non flagitium huius iacturae atque damni, praetermitto illa, quae nemo est quin gravissime et verissime conqueri possit, nos caput patrimonii publici, pulcherrimam populi Romani possessionem, subsidium annonae, horreum belli, sub signo claustrisque rei publicae positum vectigal servare non potuisse, eum denique nos agrum P. Rullo concessisse, qui ager ipse per sese et Sullanae dominationi et Gracchorum largitioni restitisset; non dico solum hoc in re publica vectigal esse, quod amissis aliis remaneat, intermissis non conquiescat, in

[a] Near Cales, forming part of Campanian territory.

those walls, the very city itself might provide a dwelling-place for empire; you, unless you desired to overthrow the republic and furnish a new tyranny for yourselves, would not, I imagine, see how that was wholly disastrous.

VII. For what is to be guarded against in establish- 20
ing colonies? If it is luxury, Capua corrupted Hannibal himself; if it is pride, this seems to have arisen in the same place from the pride of the inhabitants; if protection is our object, that colony is not set in front of us, but is set against us. But how is it armed, O immortal gods! For in the Punic war, whatever Capua was able to accomplish, she accomplished by herself alone; but now all the cities round Capua will be occupied by settlers sent by the same decemvirs; for this is the reason why the law itself allows the decemvirs to conduct such settlers as they wish into any towns they please. And it orders the district of Campania and the plain of Stella[a] to be divided among these settlers. I do not 21
complain of the decrease of the revenues, nor of the crime of this loss and damage; I pass over those things which everyone can lament most truly and most grievously—that we have been unable to preserve the chief part of the public heritage, the fairest possession of the Roman people, the reserve of corn, the war granary, the revenue which the republic kept under seal and bar; lastly, that we have yielded that territory to Publius Rullus, which by itself alone resisted both the absolutism of Sulla and the bribery of the Gracchi. I do not say that this is the only revenue in the State which is left after others have been lost, which does not remain inactive, while others are interrupted; which flourishes in peace, and does

pace niteat, in bello non obsolescat, militem sustentet, hostem non pertimescat; praetermitto omnem hanc orationem et contioni reservo; de periculo salutis ac
22 libertatis loquor. Quid enim existimatis integrum vobis in re publica fore aut in vestra libertate ac dignitate retinenda, cum Rullus atque ii, quos multo magis quam Rullum timetis, cum omni egentium atque improborum manu, cum omnibus copiis, cum omni argento et auro Capuam et urbes circa Capuam occuparint?

His ego rebus, patres conscripti, resistam vehementer atque acriter neque patiar homines ea me consule expromere, quae contra rem publicam iam
23 diu cogitarint. Errastis, Rulle, vehementer et tu et non nulli collegae tui, qui sperastis vos contra consulem veritate, non ostentatione popularem posse in evertenda re publica populares existimari. Lacesso vos, in contionem voco, populo Romano disceptatore uti volo. VIII. Etenim, ut circumspiciamus omnia, quae populo grata atque iucunda sunt, nihil tam populare quam pacem, quam concordiam, quam otium reperiemus. Sollicitam mihi civitatem suspicione, suspensam metu, perturbatam vestris legibus et contionibus et deductionibus[1] tradidistis; spem improbis ostendistis, timorem bonis iniecistis, fidem de
24 foro, dignitatem de re publica sustulistis. Hoc motu atque hac perturbatione animorum atque rerum cum populo Romano vox et auctoritas consulis repente in tantis tenebris illuxerit, cum ostenderit nihil esse metuendum, nullum exercitum, nullam manum, nullas

[1] deditionibus *MSS.* (seditionibus *two MSS.*): deductionibus *Kayser.*

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[a] Caesar and Crassus.

not lose its value in time of war; which supports the soldiery and is not afraid of the enemy—I say nothing of all this now and reserve what I have to say for a public assembly. I am now speaking of the danger
to our safety and freedom. For what do you think 22
will be left to you unimpaired in the republic or in the maintenance of your freedom and dignity, after Rullus and those whom you fear much more than Rullus,[a] with all his band of beggars and scoundrels, with all his forces, with all his silver and gold, has occupied Capua and the surrounding cities?

Such things as these, conscript fathers, I will resist passionately and vigorously; nor will I, while I am consul, allow men to set forth those plans against the
State which they have long had in mind. You made 23
a great mistake, Rullus, you and some of your colleagues, in hoping that, by opposing a consul who was popular in reality not in pretence, you could be considered popular in overthrowing the republic. I challenge you, I summon you to a public meeting, I desire to employ the Roman people to decide between us. VIII. For, in examining everything which is pleasant and agreeable to the people, we shall find nothing so popular as peace, harmony, and quietness. You have handed over to me a state agitated by suspicion, hesitating through fear, upset by your laws, your public meetings, and settling of colonists; you have given hope to the wicked and inspired the good with fear; you have banished credit from the
forum, and dignity from the republic. In the midst 24
of this confusion and disturbance of men's minds and affairs, when the voice and authority of a consul has suddenly brought light into utter darkness for the Roman people; when it has shown that nothing

colonias, nullam venditionem vectigalium, nullum imperium novum, nullum regnum decemvirale, nullam alteram Romam neque aliam sedem imperii nobis consulibus futuram summamque tranquillitatem pacis atque otii, verendum, credo, nobis erit, ne vestra ista praeclara lex agraria magis popularis esse videatur.
25 Cum vero scelera consiliorum vestrorum fraudemque legis et insidias, quae ipsi populo Romano a popularibus tribunis plebis fiant, ostendero, pertimescam, credo, ne mihi non liceat contra vos in contione consistere, praesertim cum mihi deliberatum et constitutum sit ita gerere consulatum, quo uno modo geri graviter et libere potest, ut neque provinciam neque honorem neque ornamentum aliquod aut commodum neque rem ullam, quae a tribuno plebis im-
26 pediri possit, appetiturus sim. Dicit frequentissimo senatu consul Kalendis Ianuariis sese, si status hic rei publicae maneat neque aliquod negotium exstiterit, quod honeste subterfugere non possit, in provinciam non iturum. Sic me in hoc magistratu geram, patres conscripti, ut possim tribunum plebis rei publicae iratum coërcere, mihi iratum contemnere.

IX. Quam ob rem, per deos immortales ! colligite vos, tribuni plebis, deserite eos, a quibus, nisi prospicitis, brevi tempore deseremini, conspirate nobiscum, consentite cum bonis, communem rem publicam communi studio atque amore defendite. Multa sunt occulta rei publicae vulnera, multa nefariorum civium

need be feared ; that no army, no band, no colonies, no sale of revenues, no new dominion, no rule of decemvirs, no second Rome nor another seat of empire will exist as long as we are consuls ; that there will be a period of complete tranquillity, peace, and quietness ; then, I suppose, we shall have to fear that this wonderful agrarian law of yours will appear more popular. But when I have revealed the wicked- 25
ness of your designs, the cunning fraud of your law, and the snares which are set by the popular tribunes for the Roman people itself, then, I suppose, I shall be afraid that I shall not be permitted to take a firm stand against you before a public meeting, especially as I have decided and made up my mind to carry on my consulship in the only manner in which it can be carried on with dignity and freedom. I will never seek to obtain a province, any honours, any distinction or advantage, nor anything that a tribune of the people can prevent me from obtaining. Your consul, 26
on this 1st of January, in a crowded senate declares that, if the republic continues in its present state, and unless some danger arises which he cannot honourably avoid meeting, he will not accept the government of a province. I will so conduct myself in this office, conscript fathers, that if a tribune of the people falls out with the republic, he may find control, and, if with me, contempt.

IX. Wherefore, by the immortal gods ! I beg you, tribunes of the people, recover yourselves ! abandon those by whom, unless you are careful, you will soon yourselves be abandoned. Think with us, agree with the good, take up with a common zeal and affection the defence of our common country. The republic has many hidden wounds, many pernicious designs of

perniciosa consilia ; nullum externum periculum est, non rex, non gens ulla, non natio pertimescenda est ; inclusum malum, intestinum ac domesticum est. Huic pro se quisque nostrum mederi atque hoc omnes
27 sanare velle debemus. Erratis, si senatum probare ea, quae dicuntur a me, putatis, populum autem esse in alia voluntate. Omnes, qui se incolumes volent, sequentur auctoritatem consulis soluti a cupiditatibus, liberi a delictis, cauti in periculis, non timidi in contentionibus. Quodsi qui vestrum spe ducitur se posse turbulenta ratione honori velificari suo, primum me consule id sperare desistat, deinde habeat me ipsum sibi documento, quem equestri ortum loco consulem videt, quae vitae via facillime viros bonos ad honorem dignitatemque perducat. Quodsi vos vestrum mihi studium, patres conscripti, ad communem dignitatem defendendam profitemini, perficiam profecto, id quod maxime res publica desiderat, ut huius ordinis auctoritas, quae apud maiores nostros fuit, eadem nunc longo intervallo rei publicae restituta esse videatur.

nefarious citizens are being formed; there is no danger from without, no king, no people, no nation, is to be feared; the evil is confined within our gates, it is internal and domestic. It is the duty of each of us to remedy it to the best of our power and we ought all
to endeavour to heal it. You are mistaken, if you 27
think that the senate alone approves of my words, but that the people is differently inclined. All who wish to be safe will follow the authority of a consul free from all ambitious desires, and not burdened with evil deeds, prudent in the midst of dangers, bold in strife. But if any one of you is inspired by the hope of being able to set his sails for office by methods of disorder, in the first place let him abandon the hope of that as long as I am consul; and, secondly, let him take myself, whom he sees now consul, born in equestrian ranks, as an example of what way of life most surely leads good citizens to honour and dignity. But if, conscript fathers, you promise me your zeal in upholding the common dignity, I will certainly fulfil the most ardent wish of the republic, that the authority of this order, which existed in the time of our ancestors, may now, after a long interval, be seen to be restored to the State.

THE SECOND SPEECH ON THE AGRARIAN LAW

DE LEGE AGRARIA ORATIO SECUNDA

CONTRA P. SERVILIUM RULLUM TR. PLEB. AD POPULUM

1 I. Est hoc in more positum, Quirites, institutoque maiorum, ut ei, qui beneficio vestro imagines familiae suae consecuti sunt, eam primam habeant contionem, qua gratiam beneficii vestri cum suorum laude coniungant. Qua in oratione non nulli aliquando digni maiorum loco reperiuntur, plerique autem hoc perficiunt, ut tantum maioribus eorum debitum esse videatur, unde etiam, quod posteris solveretur, redundaret. Mihi, Quirites, apud vos de meis maioribus dicendi facultas non datur, non quo non tales fuerint, quales nos illorum sanguine creatos disciplinisque institutos videtis, sed quod laude populari atque honoris
2 vestri luce caruerunt. De me autem ipso vereor ne arrogantis sit apud vos dicere, ingrati tacere. Nam et, quibus studiis hanc dignitatem consecutus sim, memet ipsum commemorare perquam grave est, et silere de tantis vestris beneficiis nullo modo possum. Quare adhibebitur a me certa ratio moderatioque

[a] This right was obtained by those whose ancestors had held curule offices—those of praetor, aedile, or consul, who left their portrait to the family. They were usually made of wax, kept in the *atria* of the house and carried in funeral processions. The possessors of such images or busts were *nobiles.*

[b] Including his brother.

[c] He is thinking of his consulship.

ON THE AGRARIAN LAW II

Delivered before the Assembly of the People

I. It is a custom, O Romans, established by our 1
ancestors, that those who by your favour have obtained the right to have images in their family [a] should, when delivering their first oration before the people, combine with an expression of gratitude for your favour some praise of their ancestors. And in such speeches some men are sometimes found to be worthy of the rank which their ancestors obtained, but the majority only make it seem that the debt due to their ancestors is so great that something is still left over to be paid to their posterity. As for myself, Romans, I have no opportunity of speaking of my ancestors before you; not that they were not such men as you see us [b] to be, sprung from their blood and brought up in their principles, but because they never enjoyed popular favour or were rendered illustrious
by the honour you bestowed.[c] But to speak about 2
myself before you I am afraid would show conceit, to remain silent ingratitude. For it is a very difficult matter to mention in regard to myself by what efforts I obtained this dignity, and yet I cannot possibly keep silence about the great favours you have bestowed upon me. For this reason I shall employ a careful reserve and moderation in my language so that, while

dicendi, ut, quid a vobis acceperim, commemorem, quare dignus vestro summo honore singularique iudicio sim, ipse modice dicam, si necesse erit, vos eosdem existimaturos putem, qui iudicavistis.

3 Me perlongo intervallo prope memoriae temporumque nostrorum primum hominem novum consulem fecistis et eum locum, quem nobilitas praesidiis firmatum atque omni ratione obvallatum tenebat, me duce rescidistis virtutique in posterum patere voluistis. Neque me tantum modo consulem, quod est ipsum per sese amplissimum, sed ita fecistis, quo modo pauci nobiles in hac civitate consules facti sunt, novus ante me nemo. II. Nam profecto, si recordari volueritis de novis hominibus, reperietis eos, qui sine repulsa consules facti sunt, diuturno labore atque aliqua occasione esse factos, cum multis annis post petissent, quam praetores fuissent, aliquanto serius, quam per aetatem ac per leges liceret; qui autem anno suo petierint, sine repulsa non esse factos; me esse unum ex omnibus novis hominibus, de quibus meminisse possimus, qui consulatum petierim, cum primum licitum sit, consul factus sim, cum primum petierim, ut vester honos ad mei temporis diem petitus, non ad alienae petitionis occasionem inter-

[a] The first man of his family to obtain a curule office, being thereby ennobled.

[b] C. Caelius Calvus was elected consul 94 B.C., T. Didius 98, Marius 107.

[c] A law which fixed the age at which a person might be elected to a public office was called a *lex annalis*. By the *lex Villia* (180 B.C.) the age for quaestor was 31, for aedile 37, for praetor 40, for consul 43. Certain modifications and exceptions were introduced later.

[d] That is, as soon as they could legitimately become candidates.

recalling all the kindness I have received from you, when it comes to considering why I have been judged worthy of the highest honour you can bestow and such remarkable evidence of your esteem, I may myself state the reason, should it be necessary, in moderate terms, thinking that you who so judged me worthy will still hold the same opinion.

I am the first "new" man,[a] after a very long interval, almost more remote than our times can remember,[b] whom you have made consul; that position, which the nobility held secured by guards and fortified in every way, you have broken open, and have shown your desire that it should in future be open to merit, allowing me to take the lead. And you not only elected me consul, which in itself is a very high honour, but you did so in a way in which few nobles in this city have been made consuls, and no "new" man before me. 3

II. For certainly, if you will be good enough to consult your memory in regard to "new" men, you will find that those who were elected without rejection only obtained office after long labours and seizing a favourable opportunity, having become candidates many years after they had been praetors and somewhat later than their age and the laws allowed them[c]; but that those who became candidates in their own year[d] were not elected without rejection first; that I am the only one of all the "new" men that we can remember who became a candidate for the consulship when the law allowed and obtained it the first time I applied, so that this honour which I have received from you, which I stood for as soon as I was allowed to do so, appears not to have been seized when opportunity offered in the person of another

ceptus, nec diuturnis precibus efflagitatus, sed digni-
4 tate impetratus esse videatur. Est illud amplissimum, quod paulo ante commemoravi, Quirites, quod hoc honore ex novis hominibus primum me multis post annis adfecistis, quod prima petitione, quod anno meo, sed tamen magnificentius atque ornatius esse illo nihil potest, quod meis comitiis non tabellam vindicem tacitae libertatis, sed vocem [unam][1] prae vobis indicem vestrarum erga me voluntatum ac studiorum tulistis. Itaque me non extrema diribitio suffragiorum, sed primi illi vestri concursus, neque singulae voces praeconum, sed una vox universi populi Romani
5 consulem declaravit. Hoc ego tam insigne, tam singulare vestrum beneficium, Quirites, cum ad animi mei fructum atque laetitiam duco esse permagnum, tum ad curam sollicitudinemque multo maius. Versantur enim, Quirites, in animo meo multae et graves cogitationes, quae mihi nullam partem neque diurnae neque nocturnae quietis impertiunt, primum tuendi consulatus, quae cum omnibus est difficilis et magna ratio, tum vero mihi praeter ceteros, cuius errato nulla venia, recte facto exigua laus et ab invitis expressa proponitur; non dubitanti fidele consilium, non laboranti certum subsidium nobilitatis ostenditur.
6 III. Quodsi solus in discrimen aliquod adducerer, ferrem, Quirites, animo aequiore; sed mihi videntur certi homines, si qua in re me non modo consilio,

[1] vivam *Clark* (*with two MSS.*): unam *other MSS.*

[a] It was not necessary for him to wait for the votes of the last tribe, as he soon had a majority.

inferior candidate, nor to have been urgently demanded with continued importunity, but to have been obtained by merit. And it is indeed an eminent dis- 4
tinction that I have just mentioned—that I was the first of the "new" men upon whom after so many years you have bestowed this honour; that it was at the first time of asking, that it was in my regular year; and yet nothing can be more glorious and more illustrious than the fact that at the comitia at which I was elected you did not hand in your voting-tablet, whose secrecy guarantees the freedom of your vote, but showed by universal acclamation your goodwill and attachment to me. Thus it was not the last sorting of the voting-tablets,[a] but those first hastening to the polling-booths, not the individual voices of the criers, but the unanimous voice of the Roman people that proclaimed me consul. This re- 5
markable, extraordinary favour on your part, Romans, I consider a great source of mental enjoyment and delight, but it causes me still more anxiety and solicitude. For my mind is occupied with many serious thoughts, which leave me no share of rest day or night—above all, as regards maintaining the dignity of the consulate, a great and difficult task for anyone, but above all for myself, since no mistake of mine will meet with indulgence; if I am successful, little praise and that forced from unwilling people is in prospect; if I am in doubt, I can see no trustworthy counsel, if I am in difficulties, no loyal support.

III. But if I alone were brought into danger, I could 6
endure it, Romans, with greater equanimity; but there appear to me to be certain men who, if they think that I have made some slight mistake con-

verum etiam casu lapsum esse arbitrabuntur, vos universos, qui me antetuleritis nobilitati, vituperaturi. Mihi autem, Quirites, omnia potius perpetienda esse duco quam non ita gerendum consulatum, ut in omnibus meis factis atque consiliis vestrum de me factum consiliumque laudetur. Accedit etiam ille mihi summus labor ac difficillima ratio consulatus gerendi, quod non eadem mihi qua superioribus consulibus lege et condicione utendum esse decrevi, qui aditum huius loci conspectumque vestrum partim magnopere fugerunt, partim non vehementer secuti sunt. Ego autem non solum hoc in loco dicam, ubi est id dictu facillimum, sed in ipso senatu, in quo esse locus huic voci non videbatur, popularem me futurum esse consulem prima illa mea oratione Kalendis
7 Ianuariis dixi. Neque enim ullo modo facere possum, ut, cum me intellegam non hominum potentium studio, non excellentibus gratiis paucorum, sed universi populi Romani iudicio consulem ita factum, ut nobilissimis hominibus longe praeponerer, non et in hoc magistratu et in omni vita essem popularis. Sed mihi ad huius verbi[1] vim et interpretationem vehementer opus est vestra sapientia. Versatur enim magnus error propter insidiosas non nullorum simulationes, qui cum populi non solum commoda, verum etiam salutem oppugnant et impediunt, oratione

[1] verbi *one MS., omitted by the rest.*

[a] The Rostra. [b] The word *popularis* (see note p. 500).

cerning any matter not only intentionally but even by accident, will be ready to reproach you all for having preferred me to my noble competitors. But it is my opinion, Romans, that to suffer anything is better than failing to carry on my consulship in such a manner that in everything I do, in everything I advise, what you have done for me and advised may obtain its meed of praise. In addition to this I have a most laborious and difficult task before me in the manner of carrying on my consulship; for I have made up my mind that I ought to follow a different system and principle from those of my predecessors, some of whom have specially avoided the approach to this place and the sight of you, while others have not shown much enthusiasm in presenting themselves. But I intend not only to declare from this place,[a] where it is very easy to do so, but in the senate itself, which did not seem to be the place for such language, I declared in that first speech of mine on the 1st of January, that I would be a consul of the
people. Nor, since I am aware that I have been 7
elected consul, not by the efforts of men of influence, not by the distinguished favours of a few, but by the unanimous approval of the Roman people, in such a way that I was by a large majority preferred to men of the highest rank, how, I ask, could I help acting as the people's friend while I hold this office and throughout my life? But I have urgent need of your wisdom to help me to explain the force and interpretation of this word.[b] For a great error is being spread abroad through the hypocritical pretences of certain individuals, who, while attacking and hindering not only the interests but even the safety of the people, are striving by their speeches to obtain the reputa-

8 adsequi volunt, ut populares esse videantur. Ego qualem Kalendis Ianuariis acceperim rem publicam, Quirites, intellego, plenam sollicitudinis, plenam timoris ; in qua nihil erat mali, nihil adversi, quod non boni metuerent, improbi exspectarent ; omnia turbulenta consilia contra hunc rei publicae statum et contra vestrum otium partim iniri, partim nobis consulibus designatis inita esse dicebantur ; sublata erat de foro fides non ictu aliquo novae calamitatis, sed suspicione ac perturbatione iudiciorum, infirmatione rerum iudicatarum ; novae dominationes, extraordinaria non imperia sed regna quaeri putabantur.

9 IV. Quae cum ego non solum suspicarer, sed plane cernerem (neque enim obscure gerebantur), dixi in senatu in hoc magistratu me popularem consulem futurum. Quid enim est tam populare quam pax ? qua non modo ei, quibus natura sensum dedit, sed etiam tecta atque agri mihi laetari videntur. Quid tam populare quam libertas ? quam non solum ab hominibus, verum etiam a bestiis expeti atque omnibus rebus anteponi videtis. Quid tam populare quam otium ? quod ita iucundum est, ut et vos et maiores vestri et fortissimus quisque vir maximos labores suscipiendos putet, ut aliquando in otio possit esse, praesertim in imperio ac dignitate. Quin idcirco etiam maioribus nostris praecipuam laudem gratiamque debemus, quod eorum labore est factum, uti

[a] *Rex*, *regnum* are specially hateful words to a Roman ear.

tion of being supporters of the people. I am aware, 8
Romans, what the condition of the republic was when it was handed over to me on the 1st of January; it was full of anxiety, full of fear; in it there was no evil, no calamity which good citizens did not dread, which the bad were not hoping for. All kinds of seditious plots against the present form of government and against your quiet were reported, some to be already in progress, some to have been entered on the moment we were elected consuls. All confidence was banished from the forum, not by the stroke of some fresh calamity, but owing to suspicion and the disorganization of the law-courts, the invalidation of decisions already made; new tyrannies, extraordinary powers, not merely military, but regal [a] powers, were, it was supposed, being aimed at.

IV. Since I not only suspected what was going on, 9
but saw it plainly (for everything was done quite openly) I declared in the senate that, as long as I held this office, I would be the people's consul. For what is so welcome to the people as peace, the delights of which not only those animals whom nature has endowed with sense, but even the houses and fields appear to me to enjoy? What is so welcome to the people as liberty, which you see is longed for and preferred to everything else not only by men but also by beasts? What is so welcome to the people as repose, which is so pleasant that both you and your ancestors and the bravest of men think that the greatest labours ought to be undertaken in order to enjoy repose some day, especially when accompanied by authority and dignity? Surely the very reason we owe especial praise and heartiest thanks to our ancestors is because it is thanks to their labours that we

impune in otio esse possemus. Quare qui possum non esse popularis, cum videam haec omnia, Quirites, pacem externam, libertatem propriam generis ac nominis vestri, otium domesticum, denique omnia, quae vobis cara atque ampla sunt, in fidem et quodam modo in patrocinium mei consulatus esse collata?
10 Neque enim, Quirites, illud vobis iucundum aut populare debet videri, largitio aliqua promulgata, quae verbis ostentari potest, re vera fieri nisi exhausto aerario nullo pacto potest; neque vero illa popularia sunt existimanda, iudiciorum perturbationes, rerum iudicatarum infirmationes, restitutio damnatorum, qui civitatum adflictarum perditis iam rebus extremi exitiorum solent esse exitus; nec, si qui agros populo Romano pollicentur, si aliud quiddam obscure moliuntur, aliud spe ac specie simulationis ostentant, populares existimandi sunt.

V. Nam, vere dicam, Quirites, genus ipsum legis agrariae vituperare non possum. Venit enim mihi in mentem duos clarissimos, ingeniosissimos, amantissimos plebei Romanae viros, Tiberium et Gaium Gracchos, plebem in agris publicis constituisse, qui agri a privatis antea possidebantur. Non sum autem ego is consul, qui, ut plerique, nefas esse arbitrer Gracchos laudare, quorum consiliis, sapientia, legibus multas esse video rei publicae partes constitutas.
11 Itaque, ut initio mihi designato consuli nuntiabatur

[a] The children of those proscribed by Sulla.

[b] Cicero does not always speak so favourably of the Gracchi (see *De officiis*, iii. 12, where he says that they deserved their fate).

are able to enjoy repose free from danger. How then can I help being on the side of the people, Romans, when I see that all these things—peace outside, liberty the characteristic of your name and race, tranquillity at home, in short, everything that is nearest and dearest to you, were entrusted to my keeping and, in a way, to the protection of my consulship ? For neither, O Romans, ought it to seem to 10
you a pleasantry or one in the interest of the people—this proclaiming of some largesse which can be promised in words but cannot possibly in reality be given without draining the treasury; nor are the disturbances of the courts, the invalidation of decisions already made, the reinstating of the condemned,[a] which are usually the final acts of the destruction of cities which are in a desperate condition and on the brink of ruin, to be regarded as acts for the benefit of the people. Nor, supposing some people promise lands to the Roman people, and supposing that, while with hopes and specious pretences they are holding out all this before your eyes, they are darkly engineering something different, do they deserve to be considered friends of the people.

V. For, to speak frankly, Romans, I do not disapprove of every kind of agrarian law in itself. For I remember that two of the most illustrious citizens, the most able and the most devoted friends of the Roman people, Tiberius and Gaius Gracchus, settled plebeians in public lands, formerly occupied by private persons. I am not one of those consuls who, like the majority, think it a crime to praise the Gracchi, by whose advice, wisdom, and laws I see that many departments of the administration were set in order.[b]
Accordingly, when I was informed at the outset, 11

legem agrariam tribunos plebis designatos conscribere, cupiebam, quid cogitarent, cognoscere; etenim arbitrabar, quoniam eodem anno gerendi nobis essent magistratus, esse aliquam oportere inter nos rei pub-
12 licae bene administrandae societatem. Cum familiariter me in eorum sermonem insinuarem ac darem, celabar, excludebar, et, cum ostenderem, si lex utilis plebi Romanae mihi videretur, auctorem me atque adiutorem futurum, tamen aspernabantur hanc liberalitatem meam; negabant me adduci posse, ut ullam largitionem probarem. Finem feci offerendi mei, ne forte mea sedulitas aut insidiosa aut impudens videretur. Interea non desistebant clam inter se convenire, privatos quosdam adhibere, ad suos coetus occultos noctem adiungere et solitudinem. Quibus rebus quanto in metu fuerimus, ex vestra sollicitudine, in qua illis temporibus fuistis, facile adsequi coniectura
13 poteritis. Ineunt tandem magistratus tribuni plebis; contio valde expectatur P. Rulli, quod et princeps erat agrariae legis et truculentius se gerebat quam ceteri. Iam designatus alio vultu, alio vocis sono, alio incessu esse meditabatur, vestitu obsoletiore, corpore inculto et horrido, capillatior quam ante barbaque maiore, ut oculis et adspectu denuntiare omnibus vim tribuniciam et minitari rei publicae videretur. Legem hominis contionemque expectabam; lex initio nulla proponitur, contionem in pridie Idus[1] advocari iubet.

[1] in primis *MSS.*: *corrected by Madvig.*

[a] The Romans did not shave until 300 B.C., when, according to Pliny, a certain Licinius Moenas introduced barbers from Sicily. After that time shaving became the fashion until the time of Hadrian. A long beard was considered slovenly.

when I was consul-elect, that the tribunes-elect were drawing up an agrarian law, I felt a desire to learn their intentions; for I thought that, since we should have to fulfil magisterial functions in the same year, there ought to be some bond of union between us, for carrying on the affairs of the State wisely. But 12
when I attempted to get on such terms with them that we could converse without reserve, I was kept in the dark, I was shut out; and when I gave them to understand that, if the law seemed to me likely to be useful to the Roman plebeians, I would support and help to pass it, they scorned my generous offer, and declared that I could never be brought to approve of any kind of largesse. I accordingly withdrew my offers of assistance, for fear that persistency might perhaps appear treacherous or insolent. In the meantime they continued to assemble privately, to invite certain private individuals to join them, to summon darkness and solitude to their aid in their secret meetings. You can easily imagine my great apprehension from your own anxiety during those times. At last the tribunes enter upon office; the speech of 13
Rullus in particular is expected, because he was both the chief promoter of the agrarian law and was more truculent than any of his colleagues. As soon as he was elected, he practised putting on a different expression, a different tone of voice, and a different gait; his clothes were in rags, his person was terribly neglected, more hair about him now and more beard,[a] so that eyes and aspect seemed to protest to the world the tribunician power and to threaten the republic. I waited for the man's expected law and speech. At first no law is proposed. He orders an assembly to be summoned for the 12th of December.

Summa cum expectatione concurritur. Explicat orationem sane longam et verbis valde bonis. Unum erat, quod mihi vitiosum videbatur, quod tanta ex frequentia inveniri nemo potuit, qui intellegere posset, quid diceret. Hoc ille utrum insidiarum causa fecerit an hoc genere eloquentiae delectetur, nescio. Tametsi, qui acutiores in contione steterant, de lege agraria nescio quid voluisse eum dicere suspicabantur. Aliquando tandem me designato lex in publicum proponitur. Concurrunt iussu meo plures uno tempore librarii, descriptam legam ad me adferunt.

14 VI. Omni hoc ratione vobis confirmare possum, Quirites, hoc animo me ad legendam legem cognoscendamque venisse, ut, si eam vobis accommodatam atque utilem esse intellegerem, auctor eius atque adiutor essem. Non enim natura neque discidio neque odio penitus insito bellum nescio quod habet susceptum consulatus cum tribunatu, quia persaepe seditiosis atque improbis tribunis plebis boni et fortes consules obstiterunt, et quia vis tribunicia non numquam libidini restitit consulari. Non potestatum dissimilitudo, sed animorum disiunctio dissensionem

15 facit. Itaque hoc animo legem sumpsi in manus, ut eam cuperem esse aptam vestris commodis et eius modi, quam consul re, non oratione popularis et honeste et libenter posset defendere. Atque ego a primo capite legis usque ad extremum reperio, Quirites, nihil aliud cogitatum, nihil aliud susceptum, nihil aliud actum, nisi uti decem reges aerarii, vecti-

[a] Or "promulgated." The law was published for the information of the public and set up to be read. Cicero would have a copy of it.

[b] A stronger word than *obstare*: "to offer active resistance to."

A crowd gathers round on tiptoe of expectation. He unrolls a very long speech in very fine language. The only fault I had to find was that, among all the throng, not one could be found who was able to understand what he said. Whether he did this with some insidious purpose or takes pleasure in this type of eloquence, I cannot say; although the more intelligent persons standing in the assembly suspected that he meant to say something or other about an agrarian law. At last, however, as soon as I was elected, the law was publicly proposed.[a] By my instructions a number of copyists come running up all together, and bring an exact transcript of it to me.

VI. I earnestly assure you, Romans, that I brought 14
to bear upon the reading and examination of this law the desire of advocating and promoting it, if I found that it was suitable for you and likely to advance your interests. For it is neither owing to natural dislike nor open disagreement nor inborn hatred that the consulship is engaged in a kind of war with the tribunate, although factious and ill-intentioned tribunes have frequently compelled good and fearless consuls to withstand them, and in like manner the power of the tribunes has sometimes been obliged to resist[b] the inordinate desires of the consuls. It is not the incompatibility of their powers, but mental disagreement that causes dissension. Accordingly, 15
I took this law into my hands with the feeling that I wanted to find it advantageous to you and such that a consul, who was a friend of the people in reality, not in words, might honourably and gladly support it. And from the first article to the last, Romans, I find that the only idea of the tribunes, their only scheme, their only aim in what they do is that ten

galium, provinciarum omnium, totius rei publicae, regnorum, liberorum populorum, orbis denique terrarum domini constituerentur legis agrariae simulatione atque nomine. Sic confirmo, Quirites, hac lege agraria pulchra atque populari dari vobis nihil, condonari certis hominibus omnia, ostentari populo Romano agros, eripi etiam libertatem, privatorum pecunias augeri, publicas exhauriri, denique, quod est indignissimum, per tribunum plebis, quem maiores praesidem libertatis custodemque esse voluerunt,
16 reges in civitate constitui. Quae cum, Quirites, exposuero, si falsa vobis videbuntur esse, sequar auctoritatem vestram, mutabo meam sententiam; sin insidias fieri libertati vestrae simulatione largitionis intellegetis, nolitote dubitare plurimo sudore et sanguine maiorum vestrorum partam vobisque traditam libertatem nullo vestro labore consule adiutore defendere.

VII. Primum caput est legis agrariae, quo, ut illi putant, temptamini leviter, quo animo libertatis vestrae deminutionem ferre possitis. Iubet enim tribunum plebis, qui eam legem tulerit, creare decemviros per tribus septemdecim, ut, quem novem
17 tribus fecerint, is decemvir sit. Hic quaero, quam ob causam initium rerum ac legum suarum hinc duxerit, ut populus Romanus suffragio privaretur. Totiens legibus agrariis curatores constituti sunt triumviri,

kings of the treasury, the revenues, all the provinces and the entire republic, of friendly kingdoms, of free nations—in fact, ten lords of the whole world, should be set up under the pretended name of an agrarian law.

Thus I maintain, O Romans, that this admirable and popular agrarian law gives you nothing, but makes a present of everything to certain individuals; it holds lands before the eyes of the Roman people and robs them even of liberty; it increases the wealth of private persons and exhausts the fortunes of the State; lastly, the most disgraceful thing of all, a tribune of the people, a magistrate whom our ancestors intended to be the protector and guardian of liberty, is to set up
kings in the republic. After I have put all these 16
facts before you, if they appear to you to be untrue, I will follow your authority and change my opinion. But if you recognize that, under the pretence of a largesse, a plot is being laid against your liberty, do not hesitate, with a consul to help you, to defend that liberty which was won by your ancestors with so much sweat and blood and handed on to you without any effort on your part.

VII. In the first article of this agrarian law a slight attempt is made to see, as they think, in what sort of temper you can put up with an attack upon your liberty. For it orders the tribune of the people, who has carried that law, to create decemvirs by the votes of seventeen tribes, so that everyone who shall have
been elected by nine tribes shall be decemvir. Here 17
I ask for what reason Rullus has made this the beginning of his proposals and laws—that the Roman people shall be deprived of their right of voting. Several times, in agrarian laws, provision has been

quinqueviri, decemviri; quaero a populari tribuno plebis, ecquando nisi per xxxv tribus creati sint. Etenim cum omnes potestates, imperia, curationes ab universo populo Romano proficisci convenit, tum eas profecto maxime, quae constituuntur ad populi fructum aliquem et commodum, in quo et universi deligant, quem populo Romano maxime consulturum putent, et unus quisque studio et suffragio suo viam sibi ad beneficium impetrandum munire possit. Hoc tribuno plebis potissimum venit in mentem, populum Romanum universum privare suffragiis, paucas tribus non certa condicione iuris, sed sortis beneficio fortuito
18 ad usurpandam libertatem vocare. "ITEM," inquit, "EODEMQUE MODO," capite altero, "UT COMITIIS PONTIFICIS MAXIMI." Ne hoc quidem vidit, maiores nostros tam fuisse populares, ut, quod per populum creari fas non erat propter religionem sacrorum, in eo tamen propter amplitudinem sacerdotii voluerint populo supplicari. Atque hoc idem de ceteris sacerdotiis Cn. Domitius, tribunus plebis, vir clarissimus, tulit, quod populus per religionem sacerdotia mandare non poterat, ut minor pars populi vocaretur; ab ea parte
19 qui esset factus, is a collegio cooptaretur. Videte,

[a] A *curator* was an official charged with carrying out a particular duty; his office was temporary at first, but was made permanent under the empire. He had no *potestas* nor *imperium*.

[b] That is, the right of voting.

[c] Originally he was elected by co-option: during the third century B.C. the election was transferred to seventeen tribes.

[d] Annoyed because the pontiffs had not elected him into their college in his father's place, in 104 B.C. he gave the people the right of election to the pontificate. Seventeen of the 35 tribes were drawn by lot, and the candidate for whom the larger number of tribes voted was declared elected. The

made for the appointment of triumvirs, quinquevirs, and decemvirs as curators; I ask this tribune, the friend of the people, if they have ever been elected except by the thirty-five tribes. For, as it is fitting that all powers, commands, and commissions[a] should proceed from the whole Roman people, this is especially the case in regard to those which are established for any advantage and interest of this people. For it is then that the whole body of citizens have to elect the man who they think will do his best to assist the people, while each individual by his zeal and vote is able to pave the way for acquiring some benefit for himself. It was left to a tribune before anyone else to think how to deprive the entire Roman people of their votes, and to invite only a few tribes, not according to established legal rules but by accidental favour of the lot, to exercise their liberty.[b] "Also and in the 18
same manner," it says in the second article, "as at the election of the pontifex maximus."[c] He did not even see that our ancestors had such regard for the people that, because on religious grounds it was considered unlawful for it to confer such an office, they nevertheless decided in his case, considering the importance of the priesthood, that candidates should humbly beg the people to grant them the office. And Gnaeus Domitius,[d] tribune of the people, a man of distinguished family, passed a similar law with regard to the other priesthoods, which provided that, because the people, on religious grounds, could not confer the priesthoods, the smaller half of them should be invited to attend, and that the candidate chosen by that half should be co-opted by the college. See the difference 19

college retained the power of admitting him. The law was repealed by Sulla but re-enacted in 63.

quid intersit inter Cn. Domitium, tribunum plebis, hominem nobilissimum, et P. Rullum, qui temptavit, ut opinor, patientiam vestram, cum se nobilem[1] esse diceret. Domitius, quod per caerimonias populi fieri non poterat, ratione adsecutus est, ut id, quoad posset, quoad fas esset, quoad liceret, populi ad partes daret; hic, quod populi semper proprium fuit, quod nemo imminuit, nemo mutavit, quin ei, qui populo agros essent adsignaturi, ante acciperent a populo beneficium, quam darent, id totum eripere vobis atque e manibus extorquere conatus est. Ille, quod dari populo nullo modo poterat, tamen quodam modo dedit; hic, quod adimi nullo pacto potest, tamen quadam ratione eripere conatur.

20 VIII. Quaeret quispiam, in tanta iniuria tantaque impudentia quid spectarit. Non defuit consilium; fides erga plebem Romanam, Quirites, aequitas in vos libertatemque vestram vehementer defuit. Iubet enim comitia decemviris habere creandis eum, qui legem tulerit. Hoc dicam planius: Iubet Rullus, homo non cupidus neque appetens, habere comitia Rullum. Nondum reprehendo; video fecisse alios; illud, quod nemo fecit, de minore parte populi, quo pertineat, videte. Habebit comitia, volet eos renuntiare, quibus regia potestas hac lege quaeritur;

[1] popularem *Zielinski.*

[a] This is a difficult passage, and there is probably some corruption. The meaning of *populi ad partes* is doubtful; according to Zumpt, it is a theatrical phrase.

between Gnaeus Domitius, tribune of the people, a noble of the nobles, and Publius Rullus, who in my opinion wanted to test your patience, by calling himself noble. Domitius secured what was forbidden, owing to religious obstacles, to be done by the whole people by the device of assigning it to part of the people as far as he could, as far as it was permitted, as far as it was lawful [a]; Rullus, on the other hand, has endeavoured to snatch from you entirely and wrest from your hands what has always been a privilege of the people, what no one has ever violated, what no one has ever altered—namely, that all those who were to assign lands to the people should receive a benefit from the Roman people before bestowing one upon it. What could in no way be given to the people, the one has notwithstanding in a certain way given it; of what could by no means be taken away, the other is endeavouring to deprive it by a certain method.

VIII. Someone will ask what his object was in behaving with such injustice and impudence. He did not act without design; but he was absolutely without good faith towards the Roman people, Quirites, without fairness towards you and your liberty. For he orders that the comitia for creating the decemvirs shall be held by the man who proposed the law. To put it more plainly: Rullus, a man who is neither avaricious nor grasping, orders that the comitia should be held—by Rullus. I do not blame him as yet; I see that others have done the same. But consider what his object is in summoning to the election only the smaller part of the people, a thing which no one has ever done. He will hold the comitia, he will want to declare those elected for whom royal author- 20

universo populo neque ipse committit neque illi horum consiliorum auctores committi recte putant
21 posse. Sortietur tribus idem Rullus. Homo felix educet, quas volet, tribus. Quos novem tribus decemviros fecerint ab eodem Rullo eductae, hos omnium rerum, ut iam ostendam, dominos habebimus. Atque hi, ut grati ac memores beneficii esse videantur, aliquid se novem tribuum notis hominibus debere confitebuntur, reliquis vero sex et xx tribubus nihil erit quod non putent posse suo iure se denegare. Quos tandem igitur decemviros fieri vult? Se primum. Qui licet? leges enim sunt veteres, neque eae consulares, si quid interesse hoc arbitramini, sed tribuniciae vobis maioribusque vestris vehementer gratae atque iucundae; Licinia est lex et altera Aebutia, quae non modo eum, qui tulerit de aliqua curatione ac potestate, sed etiam collegas eius, cognatos, adfines excipit, ne eis ea potestas curatiove
22 mandetur. Etenim si populo consulis, remove te a suspicione alicuius tui commodi, fac fidem te nihil nisi populi utilitatem et fructum quaerere, sine ad alios potestatem, ad te gratiam beneficii tui pervenire. Nam hoc quidem vix est liberi populi, vix vestrorum animorum ac magnificentiae. IX. Quis legem tulit? Rullus. Quis maiorem partem populi suffragiis pro-

[a] Men open to bribery and ready to do anything for money, who are known to everybody.

[b] About 170 B.C. The Licinian law was proposed by the orator L. Licinius Crassus. Mommsen describes the two laws as of unknown date and suggests that they were due to the Gracchan Revolution (*Staatsrecht*, i. p. 501, notes 1, 2).

ity is sought by this law. He himself neither entrusts it to the whole people, nor do those who were the instigators of these plans think that it can be rightly entrusted to it. Lots will be drawn for the tribes—by 21
the same Rullus. Lucky man! he will only draw those he wishes. The decemvirs chosen by the nine tribes drawn by the same Rullus will become, as I shall presently show, our absolute masters. And, to show themselves grateful and not forgetful of a favour, they will allow that they do owe something to the notorious [a] men of these nine tribes, but as for the remaining twenty-six there will be nothing that they do not hold themselves justified in refusing them. Whom then, I ask, does he wish to be elected decemvirs? Himself first. But how is that lawful? For old laws are in existence—not consular laws, if you think this of any importance—but laws made by tribunes, which were very acceptable and agreeable to you and your ancestors. These are the Licinian and the second Aebutian [b] laws, which not only prohibit anyone who has proposed a law concerning any commission or power from being appointed to any such commission or power, but even excludes his colleagues, kinsfolk, and relatives by marriage. Indeed, if you have the interest of the 22
people at heart, avoid all suspicion of personal gain; show that *you* seek nothing but the general usefulness and advantage, leave authority to others, let *your* reward be gratitude for your favour. For anything else is hardly worthy of a free people, of your spirit and high-mindedness.

IX. Who proposed the law? Rullus. Who deprived the greater part of the people of the right of

hibuit? Rullus. Quis comitiis praefuit, quis tribus quas voluit, vocavit nullo custode sortitus, qui, decemviros, quos voluit, renuntiavit? Idem Rullus Quem principem renuntiavit? Rullum. Vix mehercule servis hoc eum suis, non modo[1] vobis omnium gentium dominis probaturum arbitror.

Optumae leges igitur hac lege sine ulla exceptione tollentur; idem lege sibi sua curationem petet, idem maiore parte populi suffragiis spoliata comitia habebit, quos[2] volet, atque in iis se ipsum renuntiabit et videlicet collegas suos ascriptores legis agrariae non repudiabit, a quibus ei locus primus in indice et in praescriptione legis concessus est; ceteri fructus omnium rerum, qui in spe legis huius positi sunt, communi cautione atque aequa ex parte retinentur.

23 At videte hominis diligentiam, si aut Rullum cogitasse aut si Rullo potuisse in mentem venire arbitramini. Viderunt ei, qui haec machinabantur, si vobis ex omni populo deligendi potestas esset data, quaecumque res esset, in qua fides, integritas, virtus, auctoritas quaereretur, vos eam sine dubitatione ad Cn. Pompeium principem delaturos. Etenim, quem

[1] modo *inserted by Müller.*
[2] quae *Erfurt* MS.

[a] *Custos* was a man who took charge of the vessel in which the voting-tablets were put, so as to prevent their being tampered with.

[b] This can hardly mean *all* the best laws without exception, since only two are spoken of. Zumpt prefers to read *sine suspicione*: no one would suspect they would be abolished since they are not named; if they were, and you suspected their abolition, you would disapprove of the bill.

[c] Another reading is *invidiae* for *in indice*. This appears to mean that the first place in the unpopularity which might be caused, although the law was agreeable to the

voting? Rullus. Who presided over the comitia? who summoned the tribes he wanted, who drew lots for them, without any custodian[a] being present? Who declared the election of the decemvirs whom he wanted? The same Rullus. Whom did he declare chief of the decemvirs? Rullus. By Hercules! I hardly think that he would be able to persuade even his slaves to approve of this, still less you, the masters of the world.

Therefore the best laws without exception[b] will be abolished by this law; and yet by virtue of his own law, *he* will seek a commission for himself; *he* will hold the comitia, after the greater part of the people has been deprived of the right of voting; *he* will declare those whom he pleases elected, amongst them *himself*; and I do not suppose he will reject the backers of the agrarian law as his colleagues, who have granted him the first place in the title[c] and heading of the law; all the other advantages, which the people hope to obtain through this law, are reserved in equal shares for themselves and by a mutual guarantee.

But consider the carefulness of the man, if you 23
think either that Rullus thought of it or that the idea could ever have occurred to Rullus. The contrivers of this plot foresaw that, if you had the power of choosing from among all the citizens, whenever any crisis arose, in which loyalty, integrity, courage, and authority were required, you would without hesitation entrust it to Gnaeus Pompeius to manage it. In

people, by the division of the public land and the drain upon the already depleted treasury which it would involve, had been conceded to Rullus, although it does not seem to be much of a concession.

unum ex cunctis delegissetis, ut eum omnibus omnium gentium bellis terra et mari praeponeretis, certe, in decemviris faciendis sive fides haberetur sive honos, et committi huic optime et ornari hunc
24 iustissime posse intellegebant. Itaque excipitur hac lege non adulescentia, non legitimum aliquod impedimentum, non potestas, non magistratus ullus aliis negotiis ac legibus impeditus, reus denique quo minus decemvir fieri possit, non excipitur; Cn. Pompeius excipitur, ne cum P. Rullo (taceo de ceteris) decemvir fieri possit. Praesentem enim profiteri iubet, quod nulla alia in lege umquam fuit ne in iis quidem magistratibus, quorum certus ordo est, ne, si accepta lex esset, illum sibi collegam ascriberetis custodem ac vindicem cupiditatum. X. Hic, quoniam video vos hominis dignitate et contumelia legis esse commotos, renovabo illud, quod initio dixi, regnum comparari, libertatem vestram hac lege funditus tolli.
25 An vos aliter existimabatis? cum ad omnia vestra pauci homines cupiditatis oculos adiecissent, non eos in primis id acturos, ut ex omni custodia vestrae libertatis, ex omni potestate, curatione, patrocinio vestrorum commodorum Cn. Pompeius depelleretur? Viderunt et vident, si per imprudentiam vestram, neglegentiam meam legem incognitam acceperitis,

[a] The quaestorship, aedileship, etc. Although a man could declare himself a candidate during absence through his friends, and might still appear in Rome on the day the election took place (if he could), the law of Rullus forbade this. Pompeius was at the time away engaged in military operations in Cappadocia, and could not therefore present himself as a candidate in person.

fact, after you had chosen that one man out of all the citizens, that you might appoint him commander in all your wars with all nations both on land and sea, they certainly understood that, in creating decemvirs, whether it was to be considered a position of trust or an honour, the business could be most confidently put into his hands and that he most justly deserved the distinction. Accordingly, no being under age, no 24
legal impediment, no authority, no magistracy, encumbered with other affairs and the laws, not even any legal accusation, is a bar to a man being elected a decemvir; Gnaeus Pompeius is barred so that he may not be associated with Publius Rullus (I say nothing of the rest) as a decemvir. For he must be there in person as a candidate—so the law bids him, a thing which no other law has ever required, not even for the regular magistrates.[a] He was no doubt afraid that, if his law were adopted, you might attach him to himself as a colleague to watch over and punish his desires.

X. Here, since I see that your hearts are moved by the dignity of the man and the insult offered by the law, I will repeat what I said at the outset, that it is Kings who are being set up, that your liberty is entirely abolished by this law. Or did you think 25
otherwise? did you not think that, when a few men had cast greedy eyes upon all your possessions, the first thing they would do would be to drive out Pompeius from the guardianship of your liberty, from all authority and office, and from the protection of your interests? They saw and still see that, if through lack of foresight on your part or inattention on my own you adopt a law about which you know nothing, the result will be that, as soon as you per-

fore uti postea cognitis insidiis, cum decemviros creetis, tum vitiis omnibus et sceleribus legis Cn. Pompei praesidium opponendum putetis. Et hoc parvum argumentum vobis erit, a certis hominibus dominationem potestatemque omnium rerum quaeri, cum videatis eum, quem custodem vestrae libertatis fore videant, expertem fieri dignitatis?

26 Cognoscite nunc, quae potestas decemviris et quanta detur. Primum lege curiata decemviros ornat. Iam hoc inauditum et plane novum, uti curiata lege magistratus detur, qui nullis comitiis ante sit datus. Eam legem ab eo praetore populi Romani, qui sit primus factus, ferri iubet. At quo modo? Ut ii decemviratum habeant, quos plebs designaverit. Oblitus est nullos a plebe designari. Et is orbem terrarum constringit novis legibus, qui, quod in secundo capite scriptum est, non meminit in tertio? Atque hic perspicuum est, quid iuris a maioribus acceperitis, quid ab hoc tribuno plebis vobis relinquatur. XI. Maiores de singulis magistratibus bis vos sententiam ferre voluerunt. Nam cum centuriata lex censoribus ferebatur, cum curiata ceteris patriciis magistratibus, tum iterum de eisdem iudicabatur, ut esset reprehendendi potestas, si populum beneficii sui
27 paeniteret. Nunc, Quirites, prima illa comitia tenetis,

ceive the snare, when electing the decemvirs, you will think it your duty to oppose the protecting influence of Gnaeus Pompeius to all the defects and criminal provisions of the law. And will it not be a sufficient proof that certain persons are seeking absolute power and authority over everything, when you see the man whom they understand would be the guardian of your liberty excluded from this magistracy?

Learn now what authority is conferred upon the 26
decemvirs, and how far it extends. In the first place he bestows the honour of a *lex curiata* upon them. To begin with, this is unheard of and entirely unprecedented, that a magistracy should be conferred by a *lex curiata* without having been previously conferred at some *comitia*. He orders the law to be proposed by that praetor who is first appointed. But in what manner? "In order that those men may hold the decemvirate who have been elected by the plebs." He has forgotten that none of them has been elected by the plebs. And is such a man to fetter the world with new laws, a man who in the third article forgets what has been laid down in the second? And here we clearly see what rights you have received from your ancestors, and what is left you by this tribune of the people.

XI. Our ancestors willed that you should give your votes twice for the election of each magistrate. For when a law of the centuries was proposed for the censors, and a law of the curies for the other patrician magistrates, a second decision was arrived at in regard to the same men, so that, if the people repented of the favour they had bestowed, they might have the power of taking it back. Now, Romans, while you 27
have kept those *comitia* as the chief, the *centuriata* and

centuriata et tributa, curiata tantum auspiciorum causa remanserunt. Hic autem tribunus plebis quia videbat potestatem neminem iniussu populi aut plebis posse habere, curiatis eam comitiis, quae vos non initis, confirmavit, tributa, quae vestra erant, sustulit. Ita, cum maiores binis comitiis voluerint vos de singulis magistratibus iudicare, hic homo popularis ne unam quidem populo comitiorum potestatem re-
28 liquit. Sed videte hominis religionem et diligentiam. Vidit et perspexit sine curiata lege decemviros potestatem habere non posse, quoniam per novem tribus essent constituti; iubet ferre de his legem curiatam; praetori imperat. Quam id ipsum absurde, nihil ad me attinet. Iubet enim, qui primus sit praetor factus, eum legem curiatam ferre; sin is ferre non possit, qui postremus sit, ut aut lusisse in tantis rebus aut profecto nescio quid spectasse videatur. Verum hoc, quod est aut ita perversum, ut ridiculum, aut ita malitiosum, ut obscurum sit, relinquamus; ad religionem hominis revertamur. Videt sine lege curiata nihil agi per decemviros posse. Quid postea,
29 si ea lata non erit? Attendite ingenium. "TUM II DECEMVIRI," inquit, "EODEM IURE SINT, QUO QUI OPTUMA LEGE." Si hoc fieri potest, ut in hac civitate, quae longe iure libertatis ceteris civitatibus antecellit, quisquam nullis comitiis imperium aut potestatem

[a] A tribune was unable to do so, because he could not take the auspices, whereas a praetor could. The word is purposely chosen by Cicero, for a tribune could not *order* a praetor or any other magistrate, he could only oppose them by his veto.

tributa, the *comitia curiata* has been retained only for the sake of examining the auspices. But this tribune of the people, seeing that no one can exercise authority except at the bidding of the people or the plebs, has confirmed that authority by the *comitia curiata*, which you do not enter, and suppressed the *comitia tributa*, which was yours. Thus, while your ancestors desired that you should give a decision at two *comitia* in the election of each magistrate, this friend of the people has not left the authority of even one *comitia* to
the people. But mark the scrupulous punctiliousness 28
of the man! He saw and perceived that the decemvirs could not have authority without a *lex curiata*, since they had been appointed by nine tribes only. He therefore orders that a *lex curiata* should be passed about them: he issues his commands to the praetor.[a] The absurdity of this arrangement has nothing to do with me. For he orders that the praetor who has been elected first shall propose the *lex curiata*; but if he is unable to do so, then the last, so that it appears that he was either joking in matters of such importance or that he had some object or other in view. But let us leave this arrangement, which is either as absurd as it is wicked or as difficult to understand as it is malicious; let us return to the man's punctiliousness. He sees that nothing can be done by the decemvirs without a *lex curiata*. What then,
if the law is not passed? Mark his ingenuity. "In 29
this case these decemvirs shall have the same rights as magistrates elected in the strictest accordance with law." If it is possible that in a state like this, which is far before all other states in the rights accorded to liberty, anyone should be able to obtain civil or military power without the approval of any of the

adsequi possit, quid attinet tertio capite legem curiatam ferre iubere, cum quarto permittas, ut sine lege curiata idem iuris habeant, quod haberent, si optima lege a populo essent creati? Reges constituuntur, non decemviri, Quirites, itaque ab his initiis fundamentisque nascuntur, ut non modo cum gerere rem[1] coeperint, sed etiam cum constituentur, omne ve-
30 strum ius, potestas libertasque tollatur. XII. At videte, quam diligenter retineat ius tribuniciae potestatis. Consulibus legem curiatam ferentibus a tribunis plebis saepe est intercessum (neque tamen nos id querimur, esse hanc tribunorum plebis potestatem; tantum modo, si quis ea potestate temere est usus, existimamus[2]); hic tribunus plebis legi curiatae, quam praetor ferat, adimit intercedendi potestatem. Atque hoc cum in eo reprehendendum est, quod per tribunum plebis tribunicia potestas minuitur, tum in eo deridendum, quod consuli, si legem curiatam non habet, attingere rem militarem non licet, huic, cui

[1] rem *added by Kayser-Klotz*: magistratum *Clark*.
[2] exagitamus *Halm*, "*we censure him severely*": expostulamus *Pluygers*, "*we complain of him*": *Clark inserts* furiosum, "*we think him mad.*"

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[a] The *comitia curiata*, in which the whole people (patricians and plebians) voted by thirty curies (each consisting of several *gentes* associated by various regulations) was the earliest assembly of the Roman people. After the regal period its functions became purely formal, limited to confirming the appointment of magistrates (already chosen by the *centuriata*) in their authority and examining the auspices. This was called the *lex curiata de imperio*.

Cicero wants to show that the method of selecting the decemvirs is a farce. According to the old laws, officials had to submit twice—to the verdict of the *centuriata* or *tributa* and the *curiata* (except the censors, who were elected by one

comitia, what is the use of ordering, in the third article, a *lex curiata* to be proposed, when by the fourth you allow that, without *a lex curiata*, they should have the same rights as they would have if they had been appointed in the strictest accordance with the law?[a] It is Kings that are being set up over us, not decemvirs, O Romans; such are the beginnings and foundations on which their power is based, that even from the moment of their appointment, not only when they begin to exercise their functions, all your rights, all your powers, and all your liberty are swept away.

XII. But notice how carefully he maintains the 30
prerogatives of the tribunate. The consuls, when proposing a *lex curiata*, have often been obstructed by the veto of the tribunes. We do not complain of the tribunes having the power to do this; only, if anyone abuses the power, we have our opinion. But this tribune of the people in regard to a *lex curiata*, which a praetor is proposing, takes away the power of intercession. And while he must be blamed because the tribunician power is lessened by a tribune of the people, one cannot help laughing at him because, while a consul is not allowed to have anything to do with military matters unless he is authorized to do so by a

comitia only—the *centuriata*). But the *tributa*, by Rullus's law, has already been reduced to a farce by the method of election, not by the *tributa* as a whole, but only by a majority of seventeen tribes, and "you do not enter the *curiata*, and further, even if the law is not passed, if there is any intercession as to the *curiata*, the appointment is still to hold good."

Cicero's whole object is to bring the law into ridicule. The people were jockeyed as to the *tributa* and the *curiata*, with the semi-comic nature of which they were familiar. Purposely, he says nothing here to prove the exact accuracy of his statements.

vetat intercedi, ei potestatem, etiamsi intercessum sit, tamen eandem constituit, quam si lata esset lex, ut non intellegam, quare aut hic vetet intercedere aut quemquam intercessurum putet, cum intercessio stultitiam intercessoris significatura sit, non rem impeditura.

31 Sint igitur decemviri neque veris comitiis, hoc est populi suffragiis, neque illis ad speciem atque ad usurpationem vetustatis per xxx lictores auspiciorum causa adumbratis constituti. Videte nunc, eos, qui a vobis nihil potestatis acceperint, quanto maioribus ornamentis adficiat, quam omnes nos adfecti sumus, quibus vos amplissimas potestates dedistis. Iubet auspicia coloniarum deducendarum causa decemviros habere, pullarios[que] "EODEM IURE," inquit, "QUO HABUERUNT IIIVIRI LEGE SEMPRONIA." Audes etiam, Rulle, mentionem facere legis Semproniae, nec te ea lex ipsa commonet IIIviros illos xxxv tribuum suffragio creatos esse? Et, cum tu a Ti. Gracchi aequitate ac pudore longissime remotus sis, id, quod dissimillima ratione factum sit, eodem iure putas esse oportere?

32 XIII. Dat praeterea potestatem verbo praetoriam, re vera regiam; definit in quinquennium, facit sempiternam; tantis enim confirmat opibus et copiis, ut

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[a] The tribune says there is to be no veto on the praetor's proceeding, and that, even if there is, it is not to count, so that Cicero says he cannot understood why he should forbid the veto or anyone in future using it, since it does not make the slightest difference.

[b] Reading *pullariosque* with Clark, governed by *habere*. These persons fed and looked after the sacred chickens, whose movements and way of eating their food were regarded as signs. Cicero is contrasting the powers of the decemvirs as compared with those conferred by Tiberius Sempronius

lex curiata, to the man (the praetor) against whom he forbids intercession, he gives the same power, even though there has been intercession, as if the law had been carried, so that I fail to understand why he either forbids intercession or thinks that anyone will intercede, since intercession will only show the folly of the interceder, and will be no hindrance to anything.[a]

So then let there be decemvirs appointed neither 31
by the genuine *comitia*, that is, by the votes of the people, nor by that *comitia*, which in form and to keep up the ancient practice is imperfectly represented by the thirty lictors, for the purpose of taking the auspices. See now how much greater honours have been bestowed upon those who have received no authority from you than upon all of us, whom you have invested with the fullest authority. He orders the decemvirs to take the auspices for the settlement of colonies; "let them have," he says, "keepers of the sacred chickens enjoying the same right as the triumvirs by the Sempronian law."[b] Do you dare to mention the Sempronian law, Rullus? does not that law itself remind you that those triumvirs were elected by the suffrages of the thirty-five tribes? Further, since you are far behind Tiberius Gracchus in justice and modesty, do you think that laws made in a spirit so different ought to have the same authority?

XIII. Besides this, he gives the decemvirs an 32
authority which is nominally that of the praetors but is in reality that of a King. He limits it to five years; in reality he makes it perpetual, for it is strengthened

Gracchus upon the *triumviri* appointed by him as a commission to carry out his agrarian law of 133 B.C.

invitis eripi nullo modo possit. Deinde ornat apparitoribus, scribis, librariis, praeconibus, architectis, praeterea mulis, tabernaculis, cibariis,[1] supellectili; sumptum haurit ex aerario, suppeditat a sociis; finitores[2] ex equestri loco ducentos, vicenos singulis stipatores corporis constituit, eosdem ministros et satellites potestatis.

Formam adhuc habetis, Quirites, et speciem ipsam tyrannorum; insignia videtis potestatis, nondum ipsam potestatem. Dixerit enim fortasse quispiam: "Quid me ista laedunt, scriba, lictor, praeco, pullarius?" Omnia sunt haec huius modi, Quirites, ut, ea qui habeat sine vestris suffragiis, aut rex non
33 ferundus aut privatus furiosus esse videatur. Perspicite, quanta potestas permittatur; non privatorum insaniam, sed intolerantiam regum esse dicetis. Primum permittitur infinita potestas innumerabilis pecuniae conficiendae vestris vectigalibus non fruendis, sed alienandis; deinde orbis terrarum gentiumque omnium datur cognitio sine consilio, poena
34 sine provocatione, animadversio sine auxilio. Iudicare per quinquennium vel de consulibus vel de ipsis tribunis plebis poterunt; de illis interea nemo iudicabit; magistratus iis petere licebit, causam dicere non licebit; emere agros, a quibus volent et

[1] centunculis *Klotz-Clark*, "*saddle-cloths*": centuriis *MSS.*, *which, if it means anything, must mean "companies of soldiers"*: tentoriis *Turnebus*.

[2] ianitores *MSS.*, "*doorkeepers*," *a kind of bodyguard, like* stipatores.

[a] The public servants of a magistrate.

[b] To arrange the distribution of lands in a new colony.

with such privileges and forces that they cannot possibly be deprived of it against their will. Then he provides them with apparitors,[a] clerks, secretaries, criers, and architects and in addition with mules, tents, provisions, furniture; he draws money for their expenses from the treasury and supplies them with more from the allies; two hundred surveyors[b] from the equestrian order, and twenty attendants for each are appointed as the servants and henchmen of their power.

Up to now, O Romans, you have only the form and appearance of tyrants; you see the insignia of power, but not yet the power itself. Perhaps someone will say: "What harm can I get from a clerk, lictor, crier, or chicken-keeper?" All these things are of such a kind that one who possesses them without your authorization seems to be either a King and intolerable or a private individual and insane. Just observe 33
what immense power is conferred upon them; you will recognize that it is not the madness of private individuals, but the intolerable insolence of kings. In the first place, they are allowed unlimited power of procuring enormous sums of money, not by gathering in your revenues, but by alienating them; in the second place, throughout the whole world and every people in it they are granted the power of examination without judges, penalty without appeal, punishment without redress, of punishing without the intercession of the tribune. For a period of five years 34
the consuls and even the tribunes themselves will be amenable to them, while they will be amenable to none; they will be allowed to claim magisterial offices, but they cannot be brought to trial; they will be able to buy any lands which they choose from whom they

quos volent, quam volent magno, poterunt; colonias deducere novas, renovare veteres, totam Italiam suis coloniis ut complere liceat, permittitur; omnes provincias obeundi, liberos populos agris multandi, regnorum vendendorum summa potestas datur; cum velint, Romae esse, cum commodum sit, quacumque velint, summo cum imperio iudicioque rerum omnium vagari ut liceat, conceditur; interea dissolvant iudicia publica, e consiliis abducant, quos velint, singuli de maximis rebus iudicent, quaestori permittant, finitorem mittant, ratum sit, quod finitor uni illi, a quo
35 missus erit, renuntiaverit. XIV. Verbum mihi deest, Quirites, cum ego hanc potestatem regiam appello, sed profecto maior est quaedam. Nullum enim regnum fuit umquam, quod non, si minus iure aliquo, at regionibus tamen certis contineretur. Hoc vero infinitum est, quo et regna omnia et vestrum imperium, quod latissime patet, et ea, quae partim libera a vobis, partim etiam ignorata vobis sunt, permissu legis continentur.

Datur igitur eis primum, ut liceat eis vendere omnia, de quibus vendendis senatus consulta facta sunt M. Tullio Cn. Cornelio consulibus postve[1] ea.
36 Cur hoc tam est obscurum atque caecum? Quid? ista omnia, de quibus senatus censuit, nominatim in lege perscribi nonne potuerunt? Duae sunt huius obscuritatis causae, Quirites, una pudoris, si quis pudor esse potest in tam insigni impudentia, altera

[1] ve *added by Richter.*

like, at whatever price they like. They are allowed to establish fresh colonies, to restore old ones, to fill all Italy with their own; they have absolute authority to visit all the provinces, to confiscate the lands of free people, to sell kingdoms; when they like, they are allowed to remain at Rome, when it is convenient, to wander about wherever they please with absolute authority, military or judicial, in everything. Meanwhile, they can set aside the sentences in criminal trials, remove from the bench of judges anyone they choose, decide individually upon most important affairs, delegate their power to a quaestor, send a surveyor and ratify whatever the surveyor has reported to one man by whom he has been sent. XIV.
I fail to find the proper word, Romans, when I call 35
such power kingly, but assuredly it is something far greater. For there has never been an instance of royal power which was not restrained, if not by some law, at least by certain limits. But in this case there are no limits; all the kingdoms, all your dominion in its widest extent, all the countries some of which are free from your rule and others with which you are not even yet acquainted, are included by permission of the law.

In the first place, they are permitted to sell everything the sale of which was authorized by resolutions of the senate during the consulship of Marcus Tullius and Gnaeus Cornelius or afterwards.[a] Why is this
expressed with such vagueness and obscurity? What 36
is the reason? Could not all those objects, in regard to which the senate passed resolutions, have been set down expressly in the law? There are two reasons for this obscurity, Romans: the one shame, if there can be any shame in such outrageous shamelessness,

[a] 81 B.C.

sceleris. Nam neque ea, quae senatus nominatim vendenda censuit, audet appellare; sunt enim loca publica urbis, sunt sacella, quae post restitutam tribuniciam potestatem nemo attigit, quae maiores in urbe partim periculi perfugia esse voluerunt. Haec lege tribunicia decemviri vendent. Accedet eo mons Gaurus, accedent salicta ad Minturnas, adiungetur etiam illa via vendibilis Herculanea multarum deliciarum et magnae pecuniae, permulta alia, quae senatus propter angustias aerarii vendenda censuit,
37 consules propter invidiam non vendiderunt. Verum haec fortasse propter pudorem in lege reticentur. Sed illud magis est credendum et pertimescendum, quod audaciae decemvirali corrumpendarum tabularum publicarum fingendorumque senatus consultorum, quae facta numquam sint, cum ex eo numero, qui per eos annos consules fuerunt, multi mortui sint, magna potestas permittitur. Nisi forte nihil est aequum nos de eorum audacia suspicari, quorum cupiditati nimium angustus orbis terrarum esse videatur.

38 XV. Habetis unum venditionis genus, quod magnum videri vobis intellego; sed attendite animos ad ea, quae consecuntur; hunc quasi gradum quendam atque aditum ad cetera factum intellegetis. "QUI AGRI, QUAE LOCA, AEDIFICIA." Quid est praeterea? Multa in mancipiis, in pecore, auro, argento, ebore,

[a] Pompey, when consul in 70, restored all the prerogatives of the tribunes, which had been greatly diminished by Sulla in 82.

[b] In Campania, near Puteoli, where there were good vineyards.

[c] In Latium on the borders of Campania, at the mouth of the Liris, in the marshes near which Marius hid himself.

the other criminal intent. For it does not dare to name those objects which the senate resolved should be sold and mentioned one by one; for they are the public places of the city, sanctuaries which no one has laid hands upon since the restoration of the tribunician power,[a] some of which our ancestors desired to be refuges from danger in the midst of the city. All these things and places will be sold by the decemvirs by this tribunician law. Besides these there will be mount Gaurus,[b] the osier-beds of Minturnae[c]; add to these the road to Herculaneum, very valuable by reason of the surrounding delightful and fertile country and a number of other places which the senate was of opinion should be sold owing to the poverty of the treasury, but which the consuls did not sell for fear of unpopularity. However, it is 37
perhaps owing to shame that these lands have not been mentioned in the law. But what is more credible and more to be feared is that the audacity of the decemvirs is allowed considerable licence of tampering with the public registers and forging resolutions of the senate which have never been passed, since many of those who were consuls during those years are dead. Unless, perhaps, it may be said that it is wrong for us to suspect the audacity of men for whose cupidity the whole world does not seem wide enough.

XV. This is one kind of sale, which I am aware 38
seems important to you; but listen to those which follow, and you will understand that this is only a sort of step and first approach to other results. "Whatever lands, places, buildings." What else can there be? There is much property in slaves, cattle, gold, silver, ivory, robes, furniture, and other things.

veste, supellectili, ceteris rebus. Quid dicam? in-
vidiosum putasse hoc fore, si omnia nominasset? Non
metuit invidiam. Quid ergo? Longum putavit et
timuit, ne quid praeteriret; ascripsit "ALIUDVE
QUID," qua brevitate rem nullam esse exceptam
videtis. Quicquid igitur sit extra Italiam, quod pu-
blicum populi Romani factum sit L. Sulla Q. Pompeio
consulibus aut postea, id decemviros iubet vendere.
39 Hoc capite, Quirites, omnes gentes, nationes, pro-
vincias, regna decemvirum dicioni, iudicio potestati-
que permissa et condonata esse dico. Primum hoc
quaero, ecqui tandem locus usquam sit, quem non
possint decemviri dicere publicum populi Romani
esse factum. Nam cum idem possit iudicare, qui
dixerit, quid est, quod non liceat ei dicere, cui liceat
eidem iudicare? Commodum erit Pergamum,
Smyrnam, Tralles, Ephesum, Miletum, Cyzicum,
totam denique Asiam, quae post L. Sullam Q. Pom-
peium consules recuperata sit, populi Romani factam
40 esse dicere; utrum oratio ad eius rei disputationem
deerit, an, cum idem et disseret et iudicabit, impelli
non poterit, ut falsum iudicet? an, si condemnare
Asiam nolet, terrorem damnationis et minas non,
quanti volet, aestimabit? Quid? quod disputari contra
nullo pacto potest, quoniam statutum a nobis est et

What am I to say? that he thought it would cause
unpopularity, if he had specified everything? No,
he had no fear of unpopularity. What then was the
reason? He thought it was a lengthy list and was
afraid of passing over anything; and so he added,
"or anything else," that is, as you see, saying briefly
that nothing is excepted. Thus, he orders the decem-
virs to sell everything outside Italy which has become
the public property of the Roman people during the
consulship of Lucius Sulla and Quintus Pompeius or
afterwards. By this article, Romans, I assert that all 39
nations, peoples, provinces, and kingdoms are handed
over and made a free gift of to the sway, jurisdiction,
and authority of the decemvirs. In the first place, I
ask where is there a place on earth of which the
decemvirs will not be able to say that it has become
the public property of the Roman people? For when
he who has said this can himself be the judge of his
assertion, what is there that the same person may
not be allowed to say, since he is also allowed to give
a decision on the matter? It will be to their interest
to say that Pergamum, Smyrna, Tralles, Ephesus,
Miletus, Cyzicus, in fact all Asia, which was recovered
after the consulship of Lucius Sulla and Quintus
Pompeius, has become the property of the Roman
people. Will he lack words to argue the matter, or, 40
since the same man will both argue and decide, will
it not be possible that he may be induced to give a
wrong decision? or, if he is unwilling to condemn
Asia, will he not demand any price he thinks fit
for releasing it from the dread of the threatened
condemnation? What is to be said about what
cannot possibly be disputed, because the matter
has been judged and decided by ourselves—the

iudicatum, quam hereditatem iam crevimus, regnum Bithyniae, quod certe publicum est populi Romani factum, num quid causae est, quin omnes agros, urbes, stagna, portus, totam denique Bithyniam decemviri vendituri sint? XVI. Quid? Mytilenae, quae certe vestrae, Quirites, belli lege ac victoriae iure factae sunt, urbs et natura ac situ et descriptione aedificiorum et pulchritudine in primis nobilis, agri iucundi et fertiles, nempe eodem capite inclusi continentur.
41 Quid? Alexandria cunctaque Aegyptus ut occulte latet, ut recondita est, ut furtim tota decemviris traditur! Quis enim vestrum hoc ignorat, dici illud regnum testamento regis Alexae populi Romani esse factum? Hic ego consul populi Romani non modo nihil iudico, sed ne quid sentiam quidem profero. Magna enim mihi res non modo ad statuendum, sed etiam ad dicendum videtur esse. Video, qui testamentum factum esse confirmet; auctoritatem senatus exstare hereditatis aditae sentio tum, quando Alexa mortuo legatos Tyrum misimus, qui ab illo pecuniam
42 depositam nostris recuperarent. Haec L. Philippum saepe in senatu confirmasse memoria teneo; eum, qui regnum illud teneat hoc tempore, neque genere neque animo regio esse inter omnes fere video convenire. Dicitur contra nullum esse testamentum,

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[a] Nicomedes III. (*d.* 74 B.C.), king of Bithynia, bequeathed his kingdom to the Roman people.

[b] *Stagna.* Another reading is *stativa*, which may either mean the same (standing water) or military stations.

[c] Chief city of the island of Lesbos. After Sulla made peace with Mithridates, all Asia laid down its arms except Mytilene. It was stormed and destroyed.

[d] See i. 1.

[e] Consul 91 B.C. (see *Pro Quinctio*, xxii. 72).

[f] Ptolemy Auletes (the flute-player), an illegitimate son

heritage[a] which we have entered upon, the kingdom of Bithynia, which certainly has become the public property of the Roman people? What is to prevent the decemvirs selling all the land, cities, still waters,[b] harbours, in fact the whole of Bithynia?

XVI. What about Mytilenae,[c] which certainly became yours, O Romans, by the laws of war and the right of victory? This city, specially famous by nature and position, and the arrangement and beauty of its buildings, with its pleasant and fertile lands, is included in the same article of the law. What 41
about Alexandria and the whole of Egypt? How secretly it is concealed! how it is kept out of the way! how stealthily it is handed over entirely to the decemvirs! Who of you is ignorant that it is said that, by virtue of the will of King Alexas,[d] his kingdom became the property of the Roman people? Here I, the consul of the Roman people, not only pronounce no judgement on this point, but I do not even say what I think; for the matter seems to me not only important to decide, but even difficult to discuss. I see someone who asserts that the will was made; I am aware that a decree of the senate exists stating that it entered upon the inheritance at the time when, after the death of Alexas, we sent commissioners to Tyre to recover for our people a sum of money deposited there by him. I remember that 42
Lucius Philippus[e] frequently attested these facts in the senate, adding, I see, that nearly everyone agrees that he who occupies the throne to-day[f] neither by birth nor in spirit is like a king. On the other hand it is said that there is no will, that the

of Ptolemy Lathyrus (Soter II.). *Eum, qui . . . convenire* is what Philippus said.

non oportere populum Romanum omnium regnorum appetentem videri, demigraturos in illa loca nostros homines propter agrorum bonitatem et omnium
43 rerum copiam. Hac tanta de re P. Rullus cum ceteris decemviris collegis suis iudicabit, et utrum[1] iudicabit? Nam utrumque ita magnum est, ut nullo modo neque concedendum neque ferendum sit. Volet esse popularis; populo Romano adiudicabit. Ergo idem ex sua lege vendet Alexandriam, vendet Aegyptum, urbis copiosissimae pulcherrimorumque agrorum iudex, arbiter, dominus, rex denique opulentissimi regni reperietur. Non sumet sibi tantum, non appetet; iudicabit Alexandriam regis esse, a populo
44 Romano abiudicabit. XVII. Primum cur de populi Romani hereditate decemviri iudicent, cum vos volueritis de privatis hereditatibus centumviros iudicare? Deinde quis aget causam populi Romani? ubi res ista agetur? qui sunt isti decemviri, quos prospiciamus regnum Alexandriae Ptolomaeo gratis adiudicaturos? Quodsi Alexandria petebatur, cur non eosdem cursus hoc tempore, quos L. Cotta L. Torquato consulibus, cucurrerunt? cur non aperte ut antea, cur non item ut tum derecto et palam regionem illam petierunt? an, Quirites, ii qui per cursum

[1] verum *MSS.*: utrum *Puteanus*.

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[a] MS. *tum* seems meaningless. Clark reads *cur de hereditate* after Pluygers and Müller: *hereditatem* MSS. Zumpt suggests *num*.

[b] The *centumviri* (really 105) were a bench of judges, elected yearly to decide civil suits, especially those relating to inheritances.

[c] 65 B.C.

Roman people ought not to show itself so eager to seize all the kingdoms upon earth; that our citizens are likely to leave Rome and emigrate to that country, attracted by the fertility of the land and its abundant supplies of everything. Shall this important affair be 43
decided by Rullus with his colleagues the decemvirs, and which way will he decide? For each alternative is of such importance that you must by no means give way to him nor put up with his decision. If Rullus desires to be the friend of the people, he will award the kingdom to the Roman people. And so too, by virtue of his law, he will sell Alexandria, he will sell Egypt, and we shall discover that he is the judge, the arbiter, the owner of a most wealthy city and of the most beautiful country—in fine, the king of a most flourishing kingdom. Oh but he will not take so much for himself, he will not be greedy: he will decide that Alexandria is the king's, he will decide that it is not the Roman people's.

XVII. In the first place,[a] why are ten commis- 44
sioners to decide about an inheritance of the Roman people, when you have appointed a hundred[b] to decide disputes about the inheritances of private persons? Next, who will plead the cause of the Roman people? where will it be pleaded? who are the decemvirs whom we can foresee as likely to award the kingdom of Alexandria to Ptolemy for nothing? But if Alexandria was aimed at, why not follow the same course as that taken under the consulship of Lucius Cotta and Lucius Torquatus[c]? Why not openly as before? why not make for that country, just as then, frankly and straightforwardly? or did those men, Romans, who were unable to reach

rectum regnum tenere non potuerunt, nunc taetris tenebris et caligine se Alexandriam perventuros
45 arbitrati sunt? Atque illud circumspicite vestris mentibus animisque. Legatos nostros, homines auctoritate tenui, qui rerum privatarum causa legationes liberas obeunt, tamen exterae nationes ferre vix possunt. Grave est enim nomen imperii, atque id etiam in levi persona pertimescitur, propterea quod vestro, non suo nomine, cum hinc egressi sunt, abutuntur. Quid censetis, cum isti decemviri cum imperio, cum fascibus, cum illa delecta finitorum iuventute per totum orbem terrarum vagabuntur, quo tandem animo, quo metu, quo periculo miseras
46 nationes futuras? Est in imperio terror; patientur. Est in adventu sumptus; ferent. Imperabitur aliquid muneris; non recusabunt. Illud vero quantum est, Quirites, cum is decemvir, qui aliquam in urbem aut exspectatus ut hospes aut repente ut dominus venerit, illum ipsum locum, quo venerit, illam ipsam sedem hospitalem, in quam erit deductus, publicam populi Romani esse dicet! At quanta calamitas populi, si dixerit, quantus ipsi quaestus, si negarit! Atque idem, qui haec appetunt, queri non numquam solent

[a] MSS. *quietis iis*: "when those are quiet, who formerly were going to Egypt openly." The reference is probably to Crassus, who, when censor in 65, had a design to make Egypt tributary to the Romans, but was so vigorously opposed by his colleague Catulus that both resigned. Zumpt adopts the emendation of Manutius, *an, Quirites, ii*, which is printed in the text. The meaning seems to be: if the open attempt (by Crassus) on Alexandria failed, do the *decemviri* think that this attempt by dark methods will succeed? Baiter's reading *etesiis* (by favourable winds)

the kingdom by a straight course,[a] now imagine that they could arrive at Alexandria by foul mists and darkness?

Next, consider this in the light of your thoughts 45
and feelings. Foreign nations can hardly endure our ambassadors, men invested with little authority, who visit the provinces with "free embassies"[b] for the sake of their own private affairs. For the mere name of *imperium* is hateful and greatly feared, however insignificant the possessor of it may be, because, when they have left the city, it is not their own name, but yours, that they abuse. How then will it be, do you think, when these decemvirs roam about the world with *imperium*, with the rods of office, with that picked band of young surveyors? What do you think will be the feelings, the apprehension, the danger threatening the unhappy nations? The *imperium* 46
inspires terror; they will put up with it. The arrival of the "free ambassadors" entails expense; they will bear it. If a gift[c] is commanded, they will not refuse it. But what a shock would it be, O Romans, if a decemvir who has arrived in some city either expected as a guest or suddenly as a master should declare that the very place where he has arrived, the hospitable dwelling to which he has been escorted, is the public property of the Roman people! What a calamity for the people, if he says so! What a great gain for him, if he does not say so![d] And yet the very same people who are greedy for all this are sometimes in the habit of complaining that all lands

hardly fits, because Crassus certainly was not assisted (figuratively) by favourable winds.

[b] See note on I. i. 8. [c] Such as vehicles, corn, slaves.

[d] In consequence of his being bribed.

omnes terras Cn. Pompeio atque omnia maria esse permissa. Simile vero est multa committi et condonari omnia, labori et negotio praeponi an praedae et quaestui, mitti ad socios liberandos an ad opprimendos! Denique, si qui est honos singularis, nihilne interest, utrum populus Romanus eum, cui velit, deferat, an is impudenter populo Romano per legis fraudem surripiatur?

47 XVIII. Intellexistis, quot res et quantas decemviri legis permissu vendituri sint. Non est satis. Cum se sociorum, cum exterarum nationum, cum regum sanguine implerint, incidant nervos populi Romani, adhibeant manus vectigalibus vestris, irrumpant in aerarium. Sequitur enim caput, quo capite ne permittit quidem, si forte desit pecunia, quae tanta ex superioribus recipi potest, ut deesse non debeat, sed, plane quasi ea res vobis saluti futura sit, ita cogit atque imperat, ut decemviri vestra vectigalia vendant

48 nominatim. Quam tu mihi ex ordine recita de legis scripto populi Romani auctionem; quam mehercule ego praeconi huic ipsi luctuosam et acerbam praedicationem futuram puto.—Ut in suis rebus, ita in re publica luxuriosus nepos, qui prius silvas vendat quam vineas! Italiam percensuisti; perge in Siciliam.—

[a] By the Gabinian and Manilian laws.

[b] Things *commissa* have to be accounted for; if *condonata*, they are given to the recipient to do as he pleases with them. Of course Cicero is here speaking ironically.

[c] The *praeco* had already read out the part of the law in which the Silva Scantia is put down for sale.

and all seas are at the disposal of Pompeius! [a] It is the same thing, then, of course, to entrust large commissions and to make an all-comprehensive gift [b]; to be put at the head of a laborious task or to be appointed to look after booty and gain; to be sent to liberate our allies or to crush them! Lastly, if it is a case of some extraordinary honour, does it make no difference whether the Roman people bestows that honour upon anyone it chooses or whether it be impudently filched from the Roman people by a fraudulent law?

XVIII. You now see how many and what valuable 47
things the decemvirs are allowed to sell by permission of this law. That is not enough. When they have gorged themselves with the blood of the allies, of foreign nations, and of kings, let them cut the sinews of the Roman people, let them lay hands on your revenues, let them break into the treasury. For next comes an article, which does not simply give permission, if there should happen to be a want of money (which can be got together in such quantities from the results of the previous articles that there ought to be no lack of it) but, just as if it were a question of your salvation, compels and orders the decemvirs to sell your lands which produce the revenues, mentioning them expressly by name. Now 48
read to me in order the list of the property of the Roman people to be sold by auction according to the text of the law; and by Hercules! I think that the announcement of it will bring grief and bitterness to the crier himself. Just as with his own property, so in the case of the republic he is a luxurious rake—who sells his forests before his vineyards.[c] You have gone through the property in Italy; go on into Sicily.

Nihil est in hac provincia, quod aut in oppidis aut in agris maiores nostri proprium nobis reliquerint,
49 quin id venire iubeat. Quod partum recenti victoria maiores vobis in sociorum urbibus ac finibus et vinculum pacis et monumentum belli reliquerunt, id vos ab illis acceptum hoc auctore vendetis?

Hic mihi parumper mentes vestras, Quirites, commovere videor, dum patefacio vobis, quas isti penitus abstrusas insidias se posuisse arbitrantur contra Cn. Pompei dignitatem. Et mihi, quaeso, ignoscite, si appello talem virum saepius. Vos mihi praetori biennio ante, Quirites, hoc eodem in loco personam hanc imposuistis, ut, quibuscumque rebus possem, illius absentis dignitatem vobiscum una tuerer. Feci adhuc, quae potui, neque familiaritate illius adductus nec spe honoris atque amplissimae dignitatis, quam ego, etsi libente illo, tamen absente
50 illo per vos consecutus sum. Quam ob rem, cum intellegam totam hanc fere legem ad illius opes evertendas tamquam machinam comparari, et resistam consiliis hominum et perficiam profecto, quod ego video, ut id vos universi non solum videre, verum etiam tenere possitis. XIX. Iubet venire, quae Attalensium, quae Phaselitum, quae Olympenorum fuerint, agrumque Agerensem[1] et Oroandicum et Gedusanum. Haec P. Servili imperio et victoria,

[1] Agerensem *mss.*: Aperensem *Zumpt.*

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[a] In 101 Manius Aquilius the consul put down a revolt of the slaves under Athenion in Sicily and thus increased the possessions of the Roman people. There may perhaps be a reference to some recent achievement of Pompeius.

[b] Referring to his speech *De imperio Gnaei Pompei.*

[c] Attalia was in Pamphylia, Phaselis and Olympus in Lycia, Oroanda in Pisidia. Agera and Gedusa are unknown.

There is nothing in this province, of all that our ancestors have left us as our own either in the towns
or lands, which Rullus does not order to be sold. As 49
for those possessions acquired by a recent victory,[a] which your ancestors left to you, in the cities and on the frontiers of our allies, both as a guarantee of peace and a memorial of war, will you sell them at the bidding of this man after you have received them from them?

Here, O Romans, I seem for a moment to make some impression on your feelings, while I reveal the snares which they think they have laid with complete secrecy against the honour of Gnaeus Pompeius. And I ask you to pardon me if I often mention this great man's name. Two years ago,[b] in this same place, when I was praetor, you imposed upon me the part of sharing with you the task of keeping his dignity unimpaired during his absence in whatever way I could. Up to the present I have done all that was possible, although induced to do so neither by personal intimacy nor by hope of office, and that highest dignity to which —without his presence although not without his
goodwill—I have attained by your favour. Where- 50
fore, since I see plainly that this law is almost entirely being set up as a battery to overthrow this man's power, I will both resist the designs of his enemies and I will assuredly enable all of you not only to see, but also to get a firm hold upon the plot which I see is being prepared. XIX. Rullus orders everything to be sold which belonged to the inhabitants of Attalia, Phaselis, Olympus, and the land of Agera, Oroanda, and Gedusa.[c] These territories became yours by the victorious campaigns of the

clarissimi viri, vestra facta sunt. Adiungit agros Bithyniae regios, quibus nunc publicani fruuntur; deinde Attalicos agros in Cherroneso, in Macedonia, qui regis Philippi sive Persae fuerunt, qui item a censoribus locati sunt et certissimum vectigal. . .[1]
51 Ascribit item auctioni Corinthios agros opimos et fertiles et Cyrenenses, qui Apionis fuerunt, et agros in Hispania propter Karthaginem novam et in Africa ipsam veterem Karthaginem vendit, quam videlicet P. Africanus non propter religionem sedum illarum ac vetustatis de consilii sententia consecravit, nec ut ipse locus eorum, qui cum hac urbe de imperio decertarunt, vestigia calamitatis ostenderet, sed non fuit tam diligens, quam est Rullus, aut fortasse emptorem ei loco reperire non potuit. Verum inter hos agros regios captos veteribus bellis virtute summorum imperatorum adiungit regios agros, Mithridatis qui in Paphlagonia, qui in Ponto, qui in Cap-
52 padocia fuerunt, ut eos decemviri vendant. Itane vero? non legibus datis, non auditis verbis imperatoris, nondum denique bello confecto, cum rex Mithridates amisso exercitu regno expulsus tamen in ultimis terris aliquid etiam nunc moliatur atque

[1] *Clark inserts* adferunt.

[a] P. Servilius Vatia, consul 79 B.C., sent as proconsul to Cilicia. From his victory over the Isauri, he was given the surname of Isauricus. He fought in Pamphylia and the neighbouring countries.

[b] Belonging to the king of Pergamum. The last Attalus (138–133 B.C.) bequeathed his property to the Roman people: *cf.* Horace, *Odes*, i. 1. 12 "Attalicis conditionibus" of his wealth and private property.

[c] King of Cyrene, who in 96 B.C. also bequeathed his kingdom to the Roman people.

illustrious Publius Servilius.[a] He adds the royal domains of Bithynia, of which the farmers of the revenue now have the enjoyment; next the lands of Attalus in the Chersonese[b]; those in Macedonia, which belonged to Philip or Perses, and were also farmed out by the censors, and are a sure source of revenue. He also includes in the sale the rich and 51
fertile lands of Corinth and Cyrene, which belonged to Apion[c]; and sells the territories which you possess in Spain near New Carthage and in Africa old Carthage itself, which Publius Africanus I suppose consecrated,[d] by the advice of his counsellors,[e] not out of any religious respect for its dwellings and their antiquity, nor that the place itself might show traces of the disaster that overtook those who contended with Rome for the empire of the world. But Scipio was not so good a business man as Rullus is, or perhaps he was unable to find a purchaser for that place. However, to all these lands, taken in our ancient wars by the valour of our greatest commanders, he adds the royal lands of Mithridates in Paphlagonia, Pontus, and Cappadocia, in order that the decemvirs may sell them. Is it not so? Without terms having been 52
arranged, without the general's report having been heard, before the war is finished, while King Mithridates, without an army, driven from his kingdom, is nevertheless contemplating some new enterprise against us at the end of the world,[f] and is defended

[d] Its cultivation by men was thereby forbidden, as being by tradition sacred to Juno.

[e] Ten commissioners, who together with the victorious general arranged the constitution of a conquered country in the form of a province.

[f] He gathered together an army in Scythia, intending to carry the war into Italy.

ab invicta Cn. Pompei manu Maeote et illis paludibus et itinerum angustiis atque altitudine montium defendatur, cum imperator in bello versetur, in locis autem illis etiam nunc belli nomen reliquum sit, eos agros, quorum adhuc penes Cn. Pompeium omne iudicium et potestas more maiorum debet esse, viri
53 decem vendent? Et, credo, P. Rullus (is enim sic se gerit, ut sibi iam decemvir designatus esse videatur) ad eam auctionem potissimum proficiscetur! XX. Is videlicet, antequam veniat in Pontum, litteras ad Cn. Pompeium mittet, quarum ego iam exemplum ab istis compositum esse arbitror: "P. Servilius Rullus tribunus plebis decemvir s. d. Cn. Pompeio Cn. f." Non credo ascripturum esse "Magno," non enim videtur id, quod imminuere lege conatur, concessurus verbo. "Te volo curare, ut mihi Sinopae praesto sis auxiliumque adducas, dum eos agros, quos tu[1] tuo labore cepisti, ego mea lege vendam." An Pompeium non adhibebit? in eius provincia vendet manubias imperatoris? Ponite ante oculos vobis Rullum in Ponto inter nostra atque hostium castra hasta posita cum suis formosis finitoribus
54 auctionantem. Neque in hoc solum inest contumelia, quae vehementer et insignis est et nova, ut ulla res parta bello nondum legibus datis etiam tum imperatore bellum administrante non modo venierit, verum locata sit. Plus spectant homines certe quam contumeliam; sperant, si concessum sit inimicis Cn. Pompei cum imperio, cum iudicio omnium rerum,

[1] *Inserted by Lauredanus.*

[a] Sea of Azov. [b] See I. ii. 6.

from the invincible troops of Pompey by the Maeotis[a] and those marshes, by those narrow defiles and lofty mountains; while our commander is still engaged in war and even now the name of war is heard in those districts—shall the ten sell those lands, over which, according to the custom of our ancestors, Gnaeus Pompeius still ought to possess all civil and military authority? And, I suppose, Publius Rullus (for he 53
behaves just as if he were already a decemvir-elect) will take very special care to set out for this sale. XX. Obviously, too, before he reaches Pontus, he will send a letter to Gnaeus Pompeius, of which I think a copy has already been drawn up to the following effect: "Publius Servilius Rullus tribune of the people, decemvir, to Gnaeus Pompeius, son of Gnaeus, greeting." I do not suppose that he will add "Magnus," for it is not probable that he will accord him a title verbally which he is endeavouring to take away from him by the law. "I desire you to see that you attend me at Sinope without fail and bring an armed force, while I am selling the lands which you have conquered by your efforts by virtue of my law." Or will he not even invite Pompeius? will he sell the general's spoils in his province? Imagine Rullus in Pontus—between our camp and that of the enemy—with spear stuck in the ground,[b] surrounded by his handsome surveyors—holding his auction. Nor is 54
this the only insult, although it is very extraordinary and unprecedented that anything won by war, when terms have not yet been arranged and the commander is still carrying on war, should be, I do not say sold, but even let. But these men have some further object than mere insult. If the enemies of Gnaeus Pompeius be allowed not only to wander about those

cum infinita potestate, cum innumerabili pecunia non solum illis in locis vagari, verum etiam ad ipsius exercitum pervenire, aliquid illi insidiarum fieri, aliquid de eius exercitu, copiis, gloria detrahi posse. Putant, si quam spem in Cn. Pompeio exercitus habeat aut agrorum aut aliorum commodorum, hanc non habiturum, cum viderit earum rerum omnium
55 potestatem ad decemviros esse translatam. Patior non moleste tam stultos esse, qui haec sperent, tam impudentes, qui conentur; illud queror, tam me ab iis esse contemptum, ut haec portenta me consule potissimum cogitarent.

Atque in omnibus his agris aedificiisque vendendis permittitur decemviris, ut vendant, quibuscumque in locis videatur. O perturbatam rationem, o libidinem ecfrenatam, o consilia dissoluta atque perdita! XXI. Vectigalia locare nusquam licet nisi in hac urbe hoc aut illo ex loco hac vestrum frequentia; venire nostras res proprias et in perpetuum a nobis abalienari in Paphlagoniae tenebris atque in Cappadociae soli-
56 tudine licebit? L. Sulla cum bona indemnatorum civium funesta illa auctione sua venderet et se praedam suam diceret vendere, tamen ex hoc loco vendidit nec, quorum oculos offendebat, eorum ipsorum conspectum fugere ausus est; decemviri vestra vectigalia non modo non vobis, Quirites, arbitris, sed ne praecone quidem publico teste vendent?

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[a] By tampering with the loyalty of his soldiers.

[b] *Hoc*, the Rostra; *illo*, some other building in whose direction Cicero points—the temple of Castor is suggested or a basilica.

[c] Only the goods of those who had been put to death were sold.

districts with military authority, absolute jurisdiction, unlimited civil authority, and vast sums of money, but even to penetrate into the general's camp, they hope that some snare may be laid for him, and that his army,[a] his resources, and his reputation may be diminished. They imagine that, if the army expects from Gnaeus Pompeius a gift of lands or other rewards, it will no longer do so, on seeing that the power of distributing all such favours is transferred
to the decemvirs. I am not annoyed that there are 55
men so foolish as to have such hopes, and so impudent as to attempt to carry them out; what I do complain of is, that they had such contempt for me that they could be plotting such monstrous things, above all, during my consulship.

And in selling all these lands and buildings the decemvirs are allowed to sell them in whatever places they think fit. What irrational perversity! what unbridled licentiousness! what profligate and abandoned designs! XXI. It is not permitted to farm out the revenues anywhere except in this city, from this or that place,[b] before you in a full assembly. Shall it be lawful for our property to be sold and alienated from us for ever in the obscurity
of Paphlagonia or the deserts of Cappadocia? When 56
Lucius Sulla sold at that fatal auction[c] of his the goods of citizens who had not been condemned and pretended that what he was selling was his booty, he nevertheless sold it from the place where I am standing; he did not venture to avoid the gaze of those in whose eyes he was hateful. Shall the decemvirs sell your revenues, O Romans, not only without your concurrence, but without even a public crier as a witness?

Sequitur "OMNES AGROS EXTRA ITALIAM" infinito ex tempore, non, ut antea, ab Sulla et Pompeio consulibus. Cognitio decemvirum, privatus sit an pu-
57 blicus ; eique agro pergrande vectigal imponitur. Hoc quantum iudicium, quam intolerandum, quam regium sit, quem praeterit, posse, quibuscumque locis velint, nulla disceptatione, nullo consilio privata publicare, publica liberare ? Excipitur hoc capite ager in Sicilia Recentoricus ; quem ego excipi et propter hominum necessitudinem et propter rei[1] aequitatem, Quirites, ipse vehementer gaudeo. Sed quae est[2] haec impudentia ! Qui agrum Recentoricum possident, vetustate possessionis se, non iure, misericordia senatus, non agri condicione defendunt. Nam illum agrum publicum esse fatentur ; se moveri possessionibus, avitis suis sedibus, ac dis penatibus negant oportere. Ac, si est privatus ager Recentoricus, quid eum excipis ? sin autem publicus, quae est ista aequitas ceteros, etiamsi privati sint, permittere, ut publici iudicentur, hunc excipere nominatim, qui publicus esse fateatur ? Ergo eorum ager excipitur, qui apud Rullum aliqua[3] ratione valuerunt, ceteri agri omnes, qui ubique sunt, sine ullo dilectu, sine populi Romani notione, sine iudicio senatus decem-
58 viris addicentur ? XXII. Atque etiam est alia superiore capite, quo omnia veneunt, quaestuosa excep-

[1] rei *inserted by Pluygers*. [2] quae est *Madvig*: quid MSS. [3] alia MSS.: aliqua *Madvig*.

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[a] That is, public land.
[b] Cicero had been quaestor at Lilybaeum.
[c] This passive use is very rare. We might translate, "which (*i.e.* the inhabitants of which) acknowledges itself to be public property."
[d] Meaning that he was bribed by them.

Next follows : "all the lands[a] outside Italy" ; no limit of time being stated as before, "dating from the consulship of Sulla and Pompeius." It will be for the decemvirs to decide after inquiry whether the land is private or public ; and upon such land a heavy
tax is imposed. Who can help seeing what extensive, 57
intolerable, and despotic judicial power this is—to be able, wherever they choose, without any discussion, without any legal assistance, to make what is private property public and to exempt from taxes what is public property ? In this article the Recentoric district in Sicily is excepted ; and the exception gives me great pleasure both on account of my close friendship with the inhabitants[b] and because it is just. But what impudence it is ! Those who occupy the Recentoric district defend themselves on the plea of long-standing occupation, not of right, relying on the sympathy of the senate, not on the nature of the land. For they confess that it is public land, but say that it would not be fair that they should be dispossessed and driven from their ancestral homes and household gods. And if the Recentoric district is private land, why do you except it ? but if it is public, what kind of equity is it to allow other lands, even if private, to be adjudged public, and to except particularly by name one which is acknowledged to be public property ?[c] Is then the land of those men to be excepted who have had influence with Rullus for some reason,[d] while all the others, wherever they may be, without distinction, without any investigation by the Roman people, without the verdict of the senate, are to be handed over to the decemvirs ?
XXII. And in the preceding article, which authorizes 58
the general sale, another lucrative exception is men-

tio, quae teget eos agros, de quibus foedere cautum est. Audivit hanc rem non a me, sed ab aliis agitari saepe in senatu, non numquam ex hoc loco, possidere agros in ora marituma regem Hiempsalem, quos P. Africanus populo Romano adiudicarit; ei tamen postea per C. Cottam consulem cautum esse foedere. Hoc quia vos foedus non iusseritis, veretur Hiempsal, ut satis firmum sit et ratum. Cuicuimodi est illud, tollitur vestrum iudicium, foedus totum accipitur, comprobatur. Quod minuit auctionem decemviralem, laudo, quod regi amico cavet, non reprehendo, quod
59 non gratis fit, indignor. Volitat enim ante oculos istorum Iuba, regis filius, adulescens non minus bene nummatus quam bene capillatus.

Vix iam videtur locus esse, qui tantos acervos pecuniae capiat; auget, addit, accumulat. "AURUM, ARGENTUM EX PRAEDA, EX MANUBIIS, EX CORONARIO AD QUOSCUMQUE PERVENIT NEQUE RELATUM EST IN PUBLICUM NEQUE IN MONUMENTO CONSUMPTUM," id profiteri apud decemviros et ad eos referre iubet. Hoc capite etiam quaestionem de clarissimis viris, qui populi Romani bella gesserunt, iudiciumque de pecuniis repetundis ad decemviros translatum videtis. Horum erit nunc iudicium, quantae cuiusque manubiae fuerint, quid relatum, quid residuum sit; in posterum vero lex haec imperatoribus vestris constituitur, ut, quicumque de provincia decesserit, apud eosdem

[a] King of Numidia, who was restored by Pompey in 81 to his kingdom, of which he had been dispossessed.

[b] See I. iv. 12.

tioned, which will cover those lands which are protected by a treaty. Rullus often heard this matter discussed in the senate and sometimes from this place, not by me but by others, that King Hiempsal[a] possessed some lands on the sea-coast, which Publius Africanus assigned to the Roman people; but that a guarantee was afterwards given to him concerning them by the consul Gaius Cotta. But because you did not order this treaty to be made, Hiempsal is afraid that it is not binding and ratified. However that may be, your judgement is done away with, the entire treaty is accepted and approved. In that it restricts the power of the decemvirs to sell, I approve of it; in that it guarantees a friendly king, I do not disapprove of it; in that the transaction is not gratis,
I feel indignant. For I see fluttering before those 59
men's eyes the king's son Juba, a youth whose full purse attracts not less than his flowing locks.

Even now there hardly seems room to hold such great heaps of money; he amplifies, adds, accumulates. "Of the gold and silver from booty, from spoils, from crown-gold,[b] into whatever hands they have passed, and which have never been paid into the public treasury nor spent on a memorial," he orders a return to be made to the decemvirs and that it be placed at their disposal. According to this article, you see that even an investigation of the conduct of the most distinguished Roman generals and trial for extortion is transferred to the decemvirs. They will now have the power of judging what spoils each general has obtained, how much he has paid into the treasury, how much is left over; in future, all your commanders are ordered, by this law, when they leave their province, to send in a return to the

decemviros, quantum habeat praedae, manubiarum,
60 auri coronarii, profiteatur. Hic tamen vir optimus eum, quem amat, excipit, Cn. Pompeium. Unde iste amor tam improvisus ac tam repentinus? Qui honore decemviratus excluditur prope nominatim, cuius iudicium legumque datio, captorum agrorum ipsius virtute cognitio tollitur, cuius non in provinciam, sed in ipsa castra decemviri cum imperio, infinita pecunia, maxima potestate et iudicio rerum omnium mittuntur, cui ius imperatorium, quod semper omnibus imperatoribus est conservatum, soli eripitur, is excipitur unus, ne manubias referre debeat? Utrum tandem hoc capite honos haberi homini an invidia quaeri videtur?

61 XXIII. Remittit hoc Rullo Cn. Pompeius; beneficio isto legis, benignitate decemvirali nihil utitur. Nam si est aequum praedam ac manubias suas imperatores non in monumenta deorum immortalium neque in urbis ornamenta conferre, sed ad decemviros tamquam ad dominos reportare, nihil sibi appetit praecipue Pompeius, nihil; vult se in communi atque in eodem quo ceteri iure versari. Sin est iniquum, Quirites, si turpe, si intolerandum hos decemviros portitores omnibus omnium pecuniis constitui, qui non modo reges atque exterarum nationum homines, sed etiam imperatores vestros excutiant, non mihi videntur honoris causa excipere Pompeium, sed

[a] *Portitores*: custom-house officers, who examined people's baggage to see if they had anything liable to duty. The verb for such an examination is *excutere*, literally, to shake a person's garments (*cf. Pro Roscio Amerino*, § 97 "non excutio te si quid forte ferri habuisti").

same decemvirs of the amount of their booty, spoils, and crown-gold. Yet this excellent man has ex- 60
cepted Gnaeus Pompeius, for whom he has such an affection. What is the origin of this totally unforeseen and sudden fondness? The man who is almost by name excluded from the decemvirate, who is deprived of the power of judging and proposing laws, of investigating the condition of the lands conquered by his valour, not only into whose province, but even into whose camp, decemvirs are sent with military authority, with unlimited sums of money, with absolute power and the right of deciding in all matters, from whom alone those rights of a general, which all generals have always enjoyed, are forcibly taken—that man alone is exempted by the law from making a return of the money from the sale of the spoils. Is the object of this article to pay honour to the man or to make him unpopular?

XXIII. Pompeius rejects Rullus's offer; he has no 61
use for the privileges afforded by such a law, nor for the generosity of the decemvirs. For if it is just that our generals should not employ their booty and spoils on monuments to the immortal gods nor for the embellishment of Rome, but should have to carry them away to the decemvirs as it were to their masters, then Pompeius wants nothing for himself in particular, nothing; he only wishes to live under the common law, under the same law as the rest. But if it is unjust, O Romans, if it is disgraceful, if it is intolerable that these decemvirs should be appointed tollmen[a] over all the moneys of everybody, men to examine not only kings and men of foreign nations, but even your generals, it seems to me that Pompeius is not excepted to do him honour, but that

metuere, ne ille eandem contumeliam quam ceteri
62 ferre non possit. Pompeius autem hoc animo est, ut, quicquid vobis placeat, sibi ferendum putet; quod vos ferre non poteritis, id profecto perficiet ne diutius inviti ferre cogamini. Verum tamen cavet, ut, si qua pecunia post nos consules ex novis vectigalibus recipiatur, ea decemviri utantur. Nova porro vectigalia videt ea fore, quae Pompeius adiunxerit. Ita remissis manubiis vectigalibus eius virtute partis se frui putat oportere.

Parta sit pecunia, Quirites, decemviris tanta, quanta sit in terris, nihil praetermissum sit, omnes urbes, agri, regna denique, postremo etiam vectigalia vestra venierint, accesserint in cumulum manubiae vestrorum imperatorum; quantae et quam immanes divitiae decemviris in tantis auctionibus, tot iudiciis, tam infinita potestate rerum omnium quaerantur,
63 videtis. XXIV. Cognoscite nunc alios immensos atque intolerabiles quaestus, ut intellegatis ad certorum hominum importunam avaritiam hoc populare legis agrariae nomen esse quaesitum. Hac pecunia iubet agros emi, quo deducamini. Non consuevi homines appellare asperius, Quirites, nisi lacessitus. Velim fieri posset, ut a me sine contumelia nominarentur ii, qui se decemviros sperant futuros; iam videretis, quibus hominibus omnium rerum et venden-
64 darum et emendarum potestatem permitteretis. Sed,

[a] The emphasis is on the name; to name them would bring them into contempt.

his enemies are afraid that he may not be able to
submit to the same insult as the rest. But Pompeius's 62
feelings are such that he thinks he must submit to whatever you approve of; but what you cannot submit to, he will certainly take care that you are not any longer compelled to submit to against your will. However, the law provides that, if any money is received from any *new* sources of revenue after our consulship, it shall be at the disposal of the decemvirs. Moreover, Rullus sees that any additions Pompeius makes will be *new* sources of revenue. Accordingly, he leaves the spoils to Pompeius, but thinks that he ought to enjoy the revenues obtained by his valour.

Let the decemvirs possess all the money that there is in the world; let nothing be passed over; let all cities, lands, kingdoms, and lastly, even your revenues be sold; let the spoils obtained by your generals be added to the heap. You see what enormous and immense wealth is the object of the decemvirs in these sales on so large a scale, in all these decisions, in their absolute and unlimited powers.

XXIV. Now learn some other enormous and in- 63
defensible gains, and you will understand that the name of agrarian law so dear to the people has been sought out for this scheme merely in order to satisfy the insatiable avarice of certain individuals. Rullus orders lands to be bought, on which you may be settled as colonists. I am not in the habit, O Romans, of calling men by too harsh a name, unless I am provoked. I could wish it were possible that, without insulting them, those men who hope to be decemvirs themselves could be named[a] by me; you would see at once what kind of men you would allow to have
the power of buying and selling everything. But 64

quod ego nondum statuo mihi esse dicendum, vos tamen id potestis cum animis vestris cogitare ; unum hoc certe videor mihi verissime posse dicere : Tum, cum haberet haec res publica Luscinos, Calatinos, Acidinos, homines non solum honoribus populi rebusque gestis, verum etiam patientia paupertatis ornatos, et tum, cum erant Catones, Phili, Laelii, quorum sapientiam temperantiamque in publicis privatisque, forensibus domesticisque rebus perspexeratis, tamen huiusce modi res commissa nemini est, ut idem iudicaret et venderet et hoc faceret per quinquennium toto in orbe terrarum idemque agros vectigales populi Romani abalienaret et, cum summam tantae pecuniae nullo teste sibi ipse ex sua voluntate fecisset, tum denique emeret, a quibus vellet, quod
65 videretur. Committite vos nunc, Quirites, his hominibus haec omnia, quos odorari hunc decemviratum suspicamini ; reperietis partem esse eorum, quibus ad habendum, partem, quibus ad consumendum nihil satis esse videatur. XXV. Hic ego iam illud, quod expeditissimum est, ne disputo quidem, Quirites, non esse hanc nobis a maioribus relictam consuetudinem, ut emantur agri a privatis, quo plèbes publice deducatur ; omnibus legibus agris publicis privatos esse

[a] C. Fabricius Luscinus, consul 282 and 278 B.C., fought against Pyrrhus, king of Epirus. He was famous for his frugal mode of life.

A. Atilius Calatinus, consul 258 and 254 B.C., fought in the first Punic War. When sent for by the senate, he was found sowing his land.

L. Manlius Acidinus, a Roman general in the second Punic War. Consul 179 B.C.

what I think I ought not to mention yet, you can easily guess. There is one thing, however, which I certainly think I can say with perfect truth : at the time when the republic had men like the Luscini, Calatini, and Acidini,[a] men not only distinguished by the honours conferred upon them by the people and their own achievements, but also by their patient endurance of poverty ; also during the lifetime of the Catos, the Phili, and the Laelii[b] with whose wisdom and moderation in public, private, forensic, and domestic affairs you were well acquainted, no such power as this was ever given to anyone to act both as judge and seller, and that for a term of five years, throughout the world ; to alienate the revenue lands of the Roman people and then, after having amassed so large a sum of money for himself, without any witness and according to his pleasure, finally to buy whatever seemed good to him from any whom he chose. Entrust then now, O Romans, all these 65
powers to these men whom you suspect of sniffing after[c] this decemvirate ; you will find some of them who never think they have enough to keep, and others who never think they have enough to squander.

XXV. Here I do not even argue a point which is absolutely clear, O Romans—that our ancestors left us no such custom as that of buying lands from private persons, on which the common people might be settled as colonists ; that by all laws it was on public lands

[b] M. Porcius Cato the censor, consul 195 B.C., the bitter enemy of Carthage and a rigid moralist.

L. Furius Philus, consul 136 B.C., a man of learning and Greek student.

C. Laelius, consul 140 B.C., a learned man and friend of Scipio Africanus the younger.

[c] *Odorari* : "to sniff after," like a dog.

deductos. Huiusce modi me aliquid ab hoc horrido ac truce tribuno plebis fateor[1] exspectasse; hanc vero emendi et vendendi quaestuosissimam ac turpissimam mercaturam alienam actione tribunicia, alienam dignitate populi Romani semper putavi.
66 Iubet agros emi. Primum quaero, quos agros et quibus in locis. Nolo suspensam et incertam plebem Romanam obscura spe et caeca exspectatione pendere. Albanus ager est, Setinus, Privernas, Fundanus, Vescinus, Falernus, Literninus, Cumanus, Casilinas. Audio. Ab alia porta Capenas, Faliscus, Sabinus ager, Reatinus, Venafranus, Allifanus, Trebulanus. Habes tantam pecuniam, qua hosce omnes agros et ceteros horum similes non modo emere, verum etiam coacervare possis; cur eos non definis neque nominas, ut saltem deliberare plebes Romana possit, quid intersit sua, quid expediat, quantum tibi in emendis et in vendendis rebus committendum putet? "Definio," inquit, "Italiam." Satis certa regio. Etenim quantulum interest, utrum in Massici radices, an in
67 Italiam[2] aliove deducamini? Age, non definis locum; quid? naturam agri? "Vero," inquit, "QUI ARARI AUT COLI POSSIT." "Qui possit arari," inquit, "aut coli," non qui aratus aut cultus sit. Utrum haec lex est an tabula Neratianae auctionis? in qua scriptum fuisse aiunt: "IUGERA CC, IN QUIBUS OLIVETUM FIERI

[1] fateor *one MS.*: confiteor *Zielinski.*
[2] Silam silvam *Müller*: Apuliam *Sigonius.*

[a] South of Rome. [b] North of Rome.
[c] Said ironically.
[d] There are various conjectures instead of *Italiam*, but they do not seem necessary. Italy is vague and indefinite, while the other places are definite.
[e] An auctioneer.

that private persons were settled. I confess that I expected some such statement from this boorish and truculent tribune of the people, but I have always considered this most lucrative and most disgraceful traffic in buying and selling inconsistent with the functions of a tribune, inconsistent with the dignity of the Roman people. He orders lands to be 66
bought. I first ask, what lands and where? I do not wish the Roman people to hesitate in suspense and uncertainty in regard to obscure hopes and blind expectation. There are the lands of Alba, Setia, Privernum, Fundi, Vescia, Falernum, Liternum, Cumae, Casilinum.[a] I hear. Going out by the other gate,[b] we have the territory of Capena, Falisci, Reate, Venafrum, Allifae, Trebula, and that of the Sabines. Your wealth is so great that you can not only buy these lands and others like them, but heap them all together; why do you not limit them and give their names, that the Roman people may at least be able to consider what its interest is, what is to its advantage, how much confidence it thinks ought to be given to you in the purchase and sale of things? I do definitely say Italy, says Rullus. A very clearly marked district![c] For how little difference does it make to you, gentlemen, whether you are settled at the foot of the Massic hill, or in Italy,[d] or anywhere else? Come, you do not define the spot; or, say, 67
the nature of the soil? But, says he, the law says "land which can be ploughed or cultivated." "Which can be ploughed or cultivated," he says, not which has been ploughed or cultivated. Is this a law, or an advertisement of a sale by Neratius,[e] where they say it was written: "Two hundred acres in which olives may be planted, three hundred acres

POTEST, IUGERA CCC, UBI INSTITUI VINEAE POSSUNT." Hoc tu emes ista innumerabili pecunia, quod arari aut coli possit? Quod solum tam exile et macrum est, quod aratro perstringi non possit, aut quod est tam asperum saxetum, in quo agricolarum cultus non elaboret? "Idcirco," inquit, "agros nominare non possum, quia tangam nullum ab invito." Hoc, Quirites, multo est quaestuosius, quam si ab invito sumeret; inibitur enim ratio quaestus de vestra pecunia, et tum denique ager emetur, cum idem expediet emptori et venditori.

68 XXVI. Sed videte vim legis agrariae. Ne ei quidem, qui agros publicos possident, decedent de possessione, nisi erunt deducti optima condicione et pecunia maxima. Conversa ratio. Antea, cum erat a tribuno plebis mentio legis facta, continuo, qui agros publicos aut qui possessiones invidiosas tenebant, extimescebant; haec lex eos homines fortunis locupletat, invidia liberat. Quam multos enim, Quirites, existimatis esse, qui latitudinem possessionum tueri, qui invidiam Sullanorum agrorum ferre non possint, qui vendere cupiant, emptorem non reperiant, perdere iam denique illos agros ratione aliqua velint? Qui paulo ante diem noctemque tribunicium nomen horrebant, vestram vim metuebant, mentionem legis agrariae pertimescebant, ei nunc etiam ultro rogabuntur atque orabuntur, ut agros partim publicos,

[a] Referring to those who had bought the property of the proscribed.

where a vineyard may be made." Is this what you intend to buy with such an enormous amount of money—land which can be ploughed or cultivated? What soil is so poor and thin that it cannot be broken up by the plough, or what stony ground is so rough that a man cannot spend his labour in cultivating it? "The reason," says he, "why I cannot mention any particular lands is because I shall not touch any land belonging to one who does not want to sell." This, O Romans, is far more lucrative than if he took it from one who did not want to sell. For there will be a consultation about profit entered into in connexion with your money, gentlemen; and then, then only, will the land be bought when the same thing shall be advantageous to both purchaser and seller.

XXVI. But consider the force of this agrarian law. 68
Even those who possess public lands will not give up possession unless they are tempted by very advantageous terms and a large sum of money. There is a wholly changed system. Formerly, when a tribune suggested an agrarian law, all who occupied public lands or had possessions which made them unpopular,[a] immediately began to be alarmed. This law makes them wealthy and frees them from unpopularity. For how many people, O Romans, do you think there are who cannot defend the extent of their possessions, or cannot endure the unpopularity attached to the lands given by Sulla; who want to sell them but cannot find a purchaser; who would, in fact, be glad to get rid of those fields on any terms whatever? Those who a little while ago shuddered at the name of tribune day and night, who dreaded your violence, who trembled at the suggestion of an agrarian law, will now be themselves asked and entreated to hand

partim plenos invidiae, plenos periculi, quanti ipsi velint, decemviris tradant. Atque hoc carmen hic tri-
69 bunus plebis non vobis, sed sibi intus canit. Habet socerum, virum optimum, qui tantum agri in illis rei publicae tenebris occupavit, quantum concupivit. Huic subvenire vult succumbenti iam et oppresso, Sullanis oneribus gravi, sua lege ut liceat illi invidiam deponere, pecuniam condere. Et vos non dubitatis, quin vectigalia vestra vendatis plurimo maiorum vestrorum sanguine et sudore quaesita, ut Sullanos
70 possessores divitiis augeatis, periculo liberetis? Nam ad hanc emptionem decemviralem duo genera agrorum spectant, Quirites. Eorum unum propter invidiam domini fugiunt, alterum propter vastitatem. Sullanus ager a certis hominibus latissime continuatus tantam habet invidiam, ut veri ac fortis tribuni plebis stridorem unum perferre non possit. Hic ager omnis, quoquo pretio coëmptus erit, tamen ingenti pecunia nobis inducetur. Alterum genus agrorum propter sterilitatem incultum, propter pestilentiam vastum atque desertum emetur ab iis, qui eos vident sibi esse, si non vendiderint, relinquendos. Et nimirum illud est, quod ab hoc tribuno plebis dictum est in senatu, urbanam plebem nimium in re publica posse; ex-

[a] He is seeking his own interest, not yours, "looking after number one." *Intus canere* is explained as "to sing on the inner side of the cithara," that is, to oneself; or said of a player when he touched the strings with his left hand so lightly that only he and his nearest neighbours could hear.

over to the decemvirs, at whatever price they like, lands some of which are public, others which make the owners very unpopular and are full of danger to them. And this tribune of the people is singing this song, not for you, but for himself.[a] He has a father- 69
in-law, an excellent man, who in those dark days laid his hands upon as much land as he coveted. It is to his help that Rullus wishes to come, now that he is giving way and crushed, weighed down by his Sullan burdens, so that by means of his law he may be allowed to lay down his unpopularity and to lay up his cash. And do *you* not hesitate to sell your revenues acquired by your ancestors at the cost of so much labour and bloodshed, in order to increase the wealth of those who have acquired the property confiscated by Sulla and to free them from danger? For two 70
kinds of lands, O Romans, are concerned in these purchases of the decemvirs. Of one of them the owners wish to get rid because of the unpopularity they cause, of the other because of their desolate condition. The lands which come from Sulla, very largely extended beyond their limits by certain persons, excite such indignation that they cannot endure it, if a genuine and courageous tribune of the people gives but one hiss. For all this land, at whatever price it is bought, will be charged to our account at a huge price. The other kind of lands, uncultivated owing to their barrenness, waste and abandoned owing to their pestilential unhealthiness, will be purchased from those who, if they find they cannot sell them, see that they must be abandoned. And beyond doubt this is the meaning of what was said by this tribune of the people in the senate, that the common people of the city had too much power in the republic; that

hauriendam esse ; hoc enim est usus, quasi de aliqua sentina ac non de optimorum civium genere loque-
71 retur. XXVII. Vos vero, Quirites, si me audire vultis, retinete istam possessionem gratiae, libertatis, suffragiorum, dignitatis, urbis, fori, ludorum, festorum dierum, ceterorum omnium commodorum, nisi forte mavultis relictis his rebus atque hac luce rei publicae in Sipontina siccitate aut in Salpinorum pestilentiae finibus Rullo duce collocari. Aut dicat, quos agros empturus sit ; ostendat, et quid et quibus daturus sit. Ut vero, cum omnes urbes, agros, vectigalia, regna vendiderit, tum harenam aliquam aut paludes emat, id vos potestis, quaeso, concedere ? Quamquam illud est egregium, quod hac lege ante omnia veneunt, ante pecuniae coguntur et coacervantur, quam gleba una ematur. Deinde emi iubet, ab invito vetat.
72 Quaero, si, qui velint vendere, non fuerint, quid pecuniae fiet ? Referre in aerarium lex vetat, exigi prohibet. Igitur pecuniam omnem decemviri tenebunt, vobis ager non emetur ; vectigalibus abalienatis, sociis vexatis, regibus atque omnibus gentibus exinanitis illi pecunias habebunt, vos agros non habebitis. "Facile," inquit, "adducentur pecuniae magnitudine, ut velint vendere." Ergo ea lex est, qua nostra vendamus, quanti possimus, aliena emamus, quanti possessores velint.

[a] Both Sipontum and Salapia were in Apulia.

they ought to be drained off. For this is the word that he used as if he were speaking of sewage instead of a class of estimable citizens. XXVII. But do you, 71
Romans, if you will be guided by me, keep possession of the influence you enjoy, of your liberty, of your votes, of your dignity, of your city, of your forum, of your games, of your festivals, and all your other enjoyments ; unless perhaps you prefer to abandon these privileges and this brilliant republic, and to settle in the dry sands of Sipontum or in the pestilential swamps of Salapia [a] with Rullus for your leader. Or let him tell us what lands he intends to purchase ; let him declare what he is going to give, and to whom. But after he has sold all your cities, lands, revenues, and kingdoms, tell me, I ask you, will you allow him to buy some tract of sand or marshes ? Besides, it is an extraordinary thing that by this law everything is to be sold, the money is to be got together first and heaped up before a single clod of earth is bought. Then the law orders land to be bought, but without anyone being forced to sell. I ask, if there are none who want to sell, 72
what is to be done with the money ? The law forbids its being paid in to the treasury ; it prohibits its being demanded from the decemvirs. So then the decemvirs will hold all the money, and no land will be bought for you ; your revenues will be transferred, your allies annoyed, kings and all nations exhausted ; they will have your money, you will have no lands. "It will be easy," says Rullus, "to induce them to sell by offering a large price." So then we see what the law means : we are to sell our property for as much as we can, and to buy other people's property at whatever price they choose to ask for it.

73 Atque in hos agros, qui hac lege empti sint, colonias ab his decemviris deduci iubet. Quid? omnisne locus eius modi est, ut nihil intersit rei publicae, colonia deducatur in eum locum necne, an est locus, qui coloniam postulet, est, qui plane recuset[1]? Quo in genere sicut in ceteris rei publicae partibus est operae pretium diligentiam maiorum recordari, qui colonias sic idoneis in locis contra suspicionem periculi collocarunt, ut esse non oppida Italiae, sed propugnacula imperii viderentur. Hi deducent colonias in eos agros, quos emerint; etiamne, si rei publicae
74 non expediat? "Et in quae loca praeterea videbitur." Quid igitur est causae, quin coloniam in Ianiculum possint deducere et suum praesidium in capite atque cervicibus nostris possint collocare? Tu non definias, quo colonias, in quae loca, quo numero colonorum deduci velis, tu occupes locum, quem idoneum ad vim tuam iudicaris, compleas numero, confirmes praesidio, quo velis, populi Romani vectigalibus atque omnibus copiis ipsum populum Romanum coërceas, opprimas, redigas in istam decem-
75 viralem dicionem ac potestatem? XXVIII. Ut vero totam Italiam suis praesidiis obsidere atque occupare cogitet, quaeso, Quirites, cognoscite. Permittit decemviris, ut in omnia municipia, in omnes colonias totius Italiae colonos deducant, quos velint, iisque colonis agros dari iubet. Num obscure maiores opes,

[1] est plane rectius et *MSS.*: qui plane recuset *Lauredanus.*

And the law orders colonies to be established by 73
these decemvirs in the lands which are bought in accordance with it. What then? is every place of such a kind that it makes no difference to the republic whether a colony be established there or not, or is there a place which asks for a colony or which absolutely refuses it? In that class of places, as in other parts of the republic, it is worth while to remember the carefulness of our ancestors, who established colonies in suitable places in such a manner that guarded them against all suspicion of danger, so that they appeared to be not so much towns of Italy as bulwarks of an empire. These decemvirs will lead colonies into the lands which they have bought; will they do so, even if it is not to the interest of the
republic? "And into whatever places besides it 74
shall seem good to them." What then is to prevent them from settling a colony on the Janiculum and placing their garrison on our heads and necks? Are *you* not to specify where, into what places, with how many colonists you wish your colonies to be conducted? are *you* to seize any place which you have judged convenient for your deeds of violence, to fill it with such numbers, to strengthen it with such garrisons as you wish, to use the revenues and all the resources of the Roman people to coerce, crush the Roman people itself—to bring it under that decemviral sway and authority of yours? XXVIII.
I beg you, O Romans, to observe how he designs to 75
invest and occupy the whole of Italy with his garrisons. He authorizes the decemvirs to lead any citizens they choose into all the municipalities and colonies in the whole of Italy, and he orders lands to be assigned to those colonists. Is it not evident that greater re-

quam libertas vestra pati potest, et maiora praesidia quaeruntur, num obscure regnum constituitur, num obscure libertas vestra tollitur? Nam cum idem omnem pecuniam, maximam multitudinem obtinebunt, idem totam Italiam suis opibus obsidebunt, idem vestram libertatem suis praesidiis et coloniis interclusam tenebunt, quae spes tandem, quae facultas recuperandae vestrae libertatis relinquetur?

76 At enim ager Campanus hac lege dividetur orbi terrae pulcherrimus, et Capuam colonia deducetur, urbem amplissimam atque ornatissimam. Quid ad haec possumus dicere? De commodo prius vestro dicam, Quirites; deinde ad amplitudinem et dignitatem revertar, ut, si quis agri aut oppidi bonitate delectetur, ne quid exspectet, si quem rei indignitas commovet, ut huic simulatae largitioni resistat. Ac primum de oppido dicam, si quis est forte, quem Capua magis quam Roma delectet. Quinque milia colonorum Capuam scribi iubet; ad hunc numerum
77 quingenos sibi singuli sumunt. Quaeso, nolite vosmet ipsos consolari; vere et diligenter considerate. Num vobis aut vestri similibus integris, quietis, otiosis hominibus in hoc numero locum fore putatis? Si est omnibus vobis maiorive[1] vestrum parti, quamquam me vester honos vigilare dies atque noctes et intentis oculis omnes rei publicae partes intueri iubet, tamen paulisper, si ita commodum vestrum fert, conivebo.

[1] ve *added by Richter*.

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[a] *Orbi*: ablative.

[b] The proposed division of Capua.

[c] Do not console yourselves with the idea that Capua will revert to the Roman people.

sources than your liberty can tolerate and stronger defences are what he is looking for? is it not clear that a king is being set up, is it not clear that your liberty is being destroyed? For when the same men shall have all wealth, a vast population under their control, when the same men shall by their resources hold all Italy under siege, when they shall also have your liberty hemmed in by their garrisons and colonies, what hope, I ask you, what means of recovering your liberty will be left to you?

But, we shall be told, the land of Campania, the 76
most beautiful in the world,[a] will be divided by this law, and a colony conducted to Capua, a very large and magnificent city. What can we say to this? In the first place, I will speak of your interest, O Romans; then I will return to the question of your honour and dignity: so that, if some are charmed by the fertility or excellence of the soil or town, they may not expect any profit from it, or if others are roused by the indignity of the matter,[b] they may resist this pretended largesse. And first I will speak about the town, if perchance there is anyone here for whom Capua has a greater charm than Rome. Rullus orders 5,000 colonists to be enrolled for Capua; to make up this number each of the decemvirs is to choose 500. I beg you, do not indulge false hopes[c]; 77
consider the proposal carefully and in its real aspect. Do you think that there will be room among this number for you or for men like you, honourable, peaceful, fond of quiet? If there is room for you or even for the greater part of you, although the office that I owe to you bids me keep watch day and night and keep my eyes upon all parts of the republic, yet I am ready, if it be to your advantage, to wink

Sed si quinque hominum milibus ad vim, facinus caedemque delectis locus atque urbs, quae bellum facere atque instruere possit, quaeritur, tamenne patiemini vestro nomine contra vos firmari opes, armari praesidia, urbes, agros, copias comparari?
78 Nam agrum quidem Campanum, quem vobis ostentant, ipsi concupiverunt; deducent suos, quorum nomine ipsi teneant et fruantur; coëment praeterea; ista dena iugera continuabunt. Nam si dicent per legem id non licere, ne per Corneliam quidem licet; at videmus, ut longinqua mittamus, agrum Praenestinum a paucis possideri. Neque istorum pecuniis quicquam aliud deesse video nisi eius modi fundos, quorum subsidio familiarum magnitudines et Cumanorum ac Puteolanorum praediorum sumptus sustentare possint. Quodsi vestrum commodum spectat, veniat et coram mecum de agri Campani divisione disputet.
79 XXIX. Quaesivi ex eo Kalendis Ianuariis, quibus hominibus et quem ad modum illum agrum esset distributurus. Respondit a Romilia tribu se initium esse facturum. Primum quae est ista superbia et contumacia, ut populi pars amputetur, ordo tribuum neglegatur, ante rusticis detur ager, qui habent, quam urbanis, quibus ista agri spes et iucunditas ostenditur? Aut, si hoc ab se dictum negat, et satis facere omnibus

[a] One of Sulla's laws. In addition to holding Campanian land in the name of others, the decemvirs will buy up the allotments, will add ten *iugera* to another ten, and so become possessors of large estates. The law, like the Cornelian law of Sulla (by which assignations of land were made), apparently was to forbid the sale of the allotments.

[b] It was given to them by Sulla, who put the inhabitants of Praeneste to death for having given refuge to the younger Marius.

[c] The first of the *tribus rusticae*, which followed the four *tribus urbanae* and was therefore the fifth in order.

at it for a while. But if a place and city, able to organize and make war, is being sought for for 5000 men, chosen with a view to violence, crime, and murder, will you nevertheless suffer their resources to be strengthened, their garrisons to be armed, cities, lands, and troops to be got ready to oppose you under cover of your name? For they themselves 78
have long coveted the territory of Capua which they promise to you; they will conduct thither their own trusty friends, in whose name they may take possession of and enjoy it themselves. In addition, they will buy up allotments from the needy; they will add their ten acres to other ten acres. If they say this is forbidden by the law, it certainly is by the Cornelian law[a]; and yet (not to go far away) we see that the whole district of Praeneste is owned by a few individuals.[b] Nor can I see that these gentlemen want more wealth except farms to assist them in maintaining enormous households and bearing the expenses of country houses at Cumae and Puteoli. But if Rullus has your interest in view, let him come and discuss with me the division of the territory of Campania in your presence. XXIX. I asked him, 79
on January 1, to whom, and how, he intended to distribute that land. He replied that he would begin with the Romilian tribe.[c] In the first place, what is the meaning of the arrogant and insulting idea of cutting off part of the Roman people[d] and upsetting the order of the tribes; of assigning land to the country people who have it already before the city people, to whom that hope of the enjoyment of land is held out as an inducement? or, if he denies what he said, and intends to satisfy all of you, let him

[d] The *tribus urbanae*.

vobis cogitat, proferat; in iugera dena discribat, a Suburana usque ad Arniensem nomina vestra proponat. Si non modo dena iugera dari vobis, sed ne constipari quidem tantum numerum hominum posse in agrum Campanum intellegetis, tamenne vexari rem publicam, contemni maiestatem populi Romani, deludi vosmet ipsos diutius a tribuno plebis patiemini?
80 Quodsi posset ager iste ad vos pervenire, nonne eum tamen in patrimonio vestro remanere malletis? Unumne fundum pulcherrimum populi Romani, caput vestrae pecuniae, pacis ornamentum, subsidium belli, fundamentum vectigalium, horreum legionum, solacium annonae disperire patiemini? An obliti estis, Italico bello amissis ceteris vectigalibus quantos agri Campani fructibus exercitus alueritis? an ignoratis cetera illa magnifica populi Romani vectigalia perlevi saepe momento fortunae inclinatione temporis pendere? Quid nos Asiae portus, quid scriptura, quid omnia transmarina vectigalia iuvabunt tenuissima
81 suspicione praedonum aut hostium iniecta? At vero hoc agri Campani vectigal cum eius modi sit, ut tutum domi sit et omnibus praesidiis oppidorum tegatur, tum neque bellis infestum nec fructibus varium nec caelo ac loco calamitosum esse solet. Maiores nostri non solum id, quod de[1] Campanis ceperant, non im-

[1] *Inserted by Lauredanus.*

[a] *Suburra* was the first of the *tribus urbanae*; *Arniensis* (the tribe of the Arno), the last of the *tribus rusticae.*

[b] The Social War, 90–88 B.C.

[c] Others translate: "variation of the seasons."

[d] *Scriptura*: Clark reads *Syriae ora.* But Syria had only just become a Roman province and could not have been the source of much revenue as yet.

[e] The Ionian Sea, with special reference to the province of Asia.

bring forward his plan; let him divide his allotments into ten acres each and put forward your names from the tribe of Suburra to that of Arniensis.[a] If you recognize, not only that ten acres apiece cannot be allotted to you, but that so large a number of men could not even be packed into Campanian territory, will you still allow the republic to be harassed, the majesty of the Roman people to be flouted, and you yourselves to be deluded any longer by the tribune
of the people? Even if part of this territory could be 80
allotted to you, would you not prefer that it should remain a part of your patrimony? Will you allow the one most beautiful estate belonging to the Roman people, the source of your wealth, the ornament of peace, the support in war, the basis of your revenues, the granary of the legions, your relief of the corn supply—will you allow it to perish? When all your other revenues failed you in the Italian war,[b] have you forgotten how many armies you supported by the income from Campanian territory? or do you not know that the other splendid revenues of the Roman people often depend upon a slight change of fortune or alteration of circumstances[c]? What will the harbours of Asia avail us, the grazing tax,[d] and all the revenues overseas,[e] if the least rumour of pirates
or enemies is set on foot? But the revenues derived 81
from Campanian territory have this advantage that they are safe at home and are protected by all our garrisons; hence they are neither disturbed by wars, their produce does not vary, and is not liable to damage from weather or situation. Our ancestors not only refrained from diminishing what they had taken from the Campanians, but even bought up lands

minuerunt, verum etiam, quod ei tenebant, quibus adimi iure non poterat, coëmerunt. Qua de causa nec duo Gracchi, qui de plebis Romanae commodis plurimum cogitaverunt, nec L. Sulla, qui omnia sine ulla religione, quibus voluit, est dilargitus, agrum Campanum attingere ausus est; Rullus exstitit, qui ex ea possessione rem publicam demoveret, ex qua nec Gracchorum benignitas eam nec Sullae dominatio deiecisset. XXX. Quem agrum nunc praetereuntes vestrum esse dicitis et quem, ea iter qui faciunt, externi homines vestrum esse audiunt, is cum erit divisus [neque erit vester][1] neque vester esse
82 dicetur. At qui homines possidebunt? Primo quidem acres, ad vim prompti, ad seditionem parati, qui, simul ac decemviri concrepuerint, armati in cives et expediti ad caedem esse possint; deinde ad paucos opibus et copiis adfluentes totum agrum Campanum deferri videbitis. Vobis interea, qui illas a maioribus pulcherrimas vectigalium sedes armis captas accepistis, gleba nulla de paternis atque avitis possessionibus relinquetur. At quantum intererit inter vestram et privatorum diligentiam, Quirites! Cum a maioribus nostris P. Lentulus, is[2] qui princeps senatus fuit, in ea loca missus esset, ut privatos agros, qui in publicum Campanum incurrebant, pecunia publica coëmeret, dicitur renuntiasse nulla se pecunia fundum cuiusdam emere potuisse, eumque, qui nollet vendere, ideo negasse se adduci

[1] *Hervagius-Clark.* [2] *Inserted by Lauredanus.*

[a] *Concrepuerint*: literally snap their fingers, a common way of summoning a slave.
[b] Consul 162 B.C., grandfather of one of the Catilinarian conspirators.
[c] The member whose name the censors inscribed first on the list of senators.

which were held by those who could not justly be deprived of it. For this reason neither the two Gracchi, who most earnestly had in mind the interests of the Roman plebeians, nor Lucius Sulla, who without any scruples gave away everything with a lavish hand to those whom he chose, ventured to lay hands on Campanian territory: Rullus came forward to expel the republic from that ownership of which neither the generosity of the Gracchi nor the absolute power of Sulla had dispossessed them! XXX. That land which you now say is yours when you pass over it, that land which foreigners, whose way lies through it, hear belongs to you, when it has been divided [will neither be yours] nor be said to be yours. But
who will be the owners? In the first place, passionate 82
men, always disposed for violence, ready for revolution, who, as soon as the decemvirs give the signal,[a] are capable of taking arms against the citizens and are ready to massacre them; next, you will see the whole of the Campanian territory transferred to a few powerful and wealthy individuals. In the meantime, to you, who have received from your ancestors those fairest habitations of your revenues won by their valour, not a clod of earth will be left from your paternal and ancestral possessions. But how great will be the difference between the care you exercise and that of private individuals! When Publius Lentulus,[b] who was chief of the senate,[c] was sent into Campania to purchase, with public money, certain private property which ran into some public property, he is said to have reported that he had been unable to buy a certain man's estate at any price, and that the owner who was unwilling to sell had given as the reason why he could not be persuaded

posse, uti venderet, quod, cum plures fundos haberet, ex illo solo fundo numquam malum nuntium audisset.
83 Itane vero? privatum haec causa commovit; populum Romanum, ne agrum Campanum privatis gratis Rullo rogante tradat, non commovebit? At idem populus Romanus de hoc vectigali potest dicere, quod ille de suo fundo dixisse dicitur. Asia multos annos vobis fructum Mithridatico bello non tulit, Hispaniarum vectigal temporibus Sertorianis nullum fuit, Siciliae civitatibus bello fugitivorum M'. Aquilius etiam mutuum frumentum dedit; at ex hoc vectigali numquam malus nuntius auditus est. Cetera vectigalia belli difficultatibus adfliguntur; hoc vectigali
84 etiam belli difficultates sustentantur. Deinde in hac adsignatione agrorum ne illud quidem dici potest, quod in ceteris, agros desertos a plebe atque a cultura hominum liberorum esse non oportere. XXXI. Sic enim dico, si Campanus ager dividatur, exturbari et expelli plebem ex agris, non constitui et collocari. Totus enim ager Campanus colitur et possidetur a plebe, et a plebe optima et modestissima; quod genus hominum optime moratum optimorum et aratorum et militum ab hoc plebicola tribuno plebis funditus eicitur. Atque illi miseri nati in illis agris et educati, glebis subigendis exercitati quo se subito conferant, non habebunt; his robustis et valentibus et audacibus

[a] 80–72 B.C. Q. Sertorius was a Marian general, who for a long time resisted the Sullans in Spain; he was finally assassinated.

[b] 101–99 B.C. The revolting slaves (*fugitivi*) gave themselves two kings, Tryphon and Athenion; they successfully opposed three praetors, until the war was finally ended by Aquilius, who slew Athenion with his own hand.

[c] These plebeians were "in possession" of the land, which they rented (see Introduction).

to do so, that, although he had several estates, this was the only one from which he had never had a bad report. Is not this the case? this reason influenced 83
a private individual; shall not the Roman people be affected when it is a question of handing over the Campanian territory to private individuals for nothing at the bidding of Rullus? But the Roman people can give just the same answer concerning this revenue that this private individual is reported to have given concerning his estate. For many years Asia brought you no revenue at the time of the Mithridatic wars; the revenue of Spain was nothing during the revolt of Sertorius[a]; Manius Aquilius in the Servile war[b] even lent corn to the cities of Sicily; but there has never been a bad report of the revenues from Campania. The other revenues are ruined by the difficulties caused by war; those of Campania alone help to support even these difficulties. Besides, in this allotting of lands, it cannot 84
be said, as it can in regard to the rest, that lands ought not to be deserted by the people or lack the cultivation of free men. XXXI. For I say that, if the Campanian territory be divided, the people will be driven out and expelled from the lands, not established and settled in them. For the whole Campanian territory is cultivated and possessed by members of the people of a most honest and unassuming kind; and this class of men of most excellent character, excellent both as farmers and soldiers, is to be entirely driven out by this demagogue and tribune of the people.[c] And those unfortunate people, born and brought up in these lands, skilled in tilling the soil, will have nowhere to betake themselves at a moment's notice; the possession of the

decemvirum satellitibus agri Campani possessio tota tradetur, et, ut vos nunc de vestris maioribus praedicatis: " Hunc agrum nobis maiores nostri reliquerunt," sic vestri posteri de vobis praedicabunt: " Hunc agrum patres nostri acceptum a patribus suis
85 perdiderunt." Equidem existimo: si iam campus Martius dividatur et uni cuique vestrum, ubi consistat, bini pedes adsignentur, tamen promiscue toto quam proprie parva frui parte maletis. Quare, etiamsi ad vos esset singulos aliquid ex hoc agro perventurum, qui vobis ostenditur, aliis comparatur, tamen honestius eum vos universi quam singuli possideretis. Nunc vero cum ad vos nihil pertineat, sed paretur aliis, eripiatur vobis, nonne acerrime, tamquam armato hosti, sic huic legi pro vestris agris resistetis?

Adiungit Stellatem campum agro Campano et in eo duodena discribit in singulos homines iugera. Quasi
86 vero paulum differat ager Campanus a Stellati; sed multitudo, Quirites, quaeritur, qua illa omnia oppida compleantur. Nam dixi antea lege permitti, ut, quae velint municipia, quas velint veteres colonias colonis suis occupent. Calenum municipium complebunt; Teanum oppriment; Atellam, Cumas, Neapolim, Pompeios, Nuceriam suis praesidiis devincient: Puteolos vero, qui nunc in sua potestate sunt, suo iure libertateque utuntur, totos novo populo atque adventiciis copiis occupabunt. XXXII. Tunc illud vexillum Cam-

Campanian territory will be entirely handed over to these robust, sturdy, and audacious henchmen of the decemvirs; and, as you now say of your ancestors, " Our ancestors left us this land," so your descendants will say of you, " Our fathers inherited this land from their fathers and they have lost it." I indeed think 85
that, supposing for the moment the Campus Martius were divided and two feet of standing room were assigned to each of you, still you would prefer to have the enjoyment of the whole in common than to have a small part of it as your own. Wherefore, even if some of this territory, which is promised to you but is really intended for others, should come to each of you, yet it would be more honourable for you to possess the whole in common than for each of you to have a portion. But as it is, since nothing comes to you but all is meant for others and is robbed from you, will you not most energetically resist this law, as if it were an armed enemy, in defence of your lands?

Rullus adds the plain of Stella to the Campanian territory and assigns twelve acres apiece in it to each colonist, as if indeed there were so little difference between the two! But the truth is, Romans, that a 86
very large number of men is needed to fill all these towns. For, as I have said before, the law allows the decemvirs to occupy with their own colonists such municipalities as they please, such old colonies as they please. They will fill the municipality of Cales, they will overwhelm Teanum, they will extend a chain of garrisons through Atella, Cumae, Neapolis, Pompeii, and Nuceria, but Puteoli, which is now independent and enjoys its liberty and has its own jurisdiction, will be occupied entirely by a new people and foreign forces. XXXII. Then that standard of a Campanian

panae coloniae vehementer huic imperio timendum Capuam a decemviris inferetur, tunc contra hanc Romam, communem patriam omnium nostrum, illa
87 altera Roma quaeretur. In id oppidum homines nefarii rem publicam nostram transferre conantur, quo in oppido maiores nostri nullam omnino rem publicam esse voluerunt, qui tres solum urbes in terris omnibus, Carthaginem, Corinthum, Capuam, statuerunt posse imperii gravitatem ac nomen sustinere. Deleta Carthago est, quod cum hominum copiis, tum ipsa natura ac loco, succincta portibus, armata muris, excurrere ex Africa, imminere † ita[1] fructuosissimis insulis populi Romani videbatur. Corinthi vestigium vix relictum est. Erat enim posita in angustiis atque in faucibus Graeciae sic, ut terra claustra locorum teneret et duo maria maxime navigationi diversa paene coniungeret, cum pertenui discrimine separentur. Haec, quae procul erant a conspectu imperii, non solum adflixerunt, sed etiam, ne quando recreata exsurgere atque erigere se possent, funditus, ut dixi,
88 sustulerunt. De Capua multum est et diu consultum; extant litterae, Quirites, publicae, sunt senatus consulta complura. Statuerunt homines sapientes, si agrum Campanis ademissent, magistratus, senatum, publicum ex illa urbe consilium sustulissent, imaginem rei publicae nullam reliquissent, nihil fore, quod Capuam timeremus. Itaque hoc perscriptum in monumentis veteribus reperietis, ut esset urbs, quae res eas,

[1] ita *MSS.*: italiae ac *Lauredanus*, duabus *Gebhardt*.

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[a] See I. i. 5.
[b] This is the literal meaning of *diversus*.

colony, so formidable to our empire, will be planted in Capua by the decemvirs, then they will try to make a second Rome to oppose this Rome of ours, the common fatherland of us all. It is to that town that these im- 87
pious rascals are endeavouring to transfer our republic, that town in which our ancestors decided that no republican form of government should exist, being convinced that only three cities in the world—Carthage, Corinth, and Capua—could support the dignity and name of an imperial city. Carthage has been destroyed, because, from the vast number of its inhabitants, and the natural advantages of its situation, well furnished with harbours and fortified with walls, it seemed to jut out from Africa, and thus to threaten the most productive islands of the Roman people. Scarcely a vestige of Corinth remains.[a] For its position was such on the straits and the entrance to Greece, that by land it held the keys of various places and almost united two seas, set over against each other[b] especially for purposes of navigation, separated by a very small intervening space. These cities were far out of sight of our dominion, yet our ancestors not only overthrew them but, to prevent their recovery and rising again with renewed strength, as I said, they utterly destroyed them. For a long time the lot of 88
Capua was the subject of earnest discussion; public records and several decrees of the senate are to be seen, O Romans. Our ancestors wisely decided that, if they deprived the Campanians of their territory, removed the magistrates, senate, and public council from that city and left no semblance of a republic, there would be no reason why we should be afraid of Capua. Accordingly you will find it written in ancient records that a city might exist to supply the

quibus ager Campanus coleretur, suppeditare posset, ut esset locus comportandis condendisque fructibus, ut aratores cultu agrorum defessi urbis domiciliis uterentur, idcirco illa aedificia non esse deleta.

89 XXXIII. Videte, quantum intervallum sit interiectum inter maiorum nostrorum consilia et inter istorum hominum dementiam. Illi Capuam receptaculum aratorum, nundinas rusticorum, cellam atque horreum Campani agri esse voluerunt, hi expulsis aratoribus, effusis ac dissipatis fructibus vestris eandem Capuam sedem novae rei publicae constituunt, molem contra veterem rem publicam comparant. Quodsi maiores nostri existimassent quemquam in tam illustri imperio et tam praeclara populi Romani disciplina M. Bruti aut P. Rulli similem futurum (hos enim nos duos adhuc vidimus, qui hanc rem publicam Capuam totam transferre vellent), profecto nomen illius urbis

90 non reliquissent. Verum arbitrabantur Corinthi et Carthagini, etiamsi senatum et magistratus sustulissent agrumque civibus ademissent, tamen non defore, qui illa restituerent atque qui ante omnia commutarent, quam nos audire possemus; hic vero in oculis senatus populique Romani nihil posse existere, quod non ante extingui atque opprimi posset, quam plane esset ortum ac natum. Neque vero ea res fefellit homines divina mente et consilio praeditos. Nam post Q. Fulvium Q. Fabium consules, quibus consulibus Capua

[a] Note the intentional repetition of *inter* and compounds.

[b] Supposed to be the father of Caesar's murderer and the tribune mentioned in *Pro Quinctio* (§ 65).

[c] 209 B.C. Livy says, two years earlier (Cn. Fulvius Centumalus and P. Sulpicius Galba, consuls).

means for the cultivation of Campanian territory, a place where the crops could be collected and stored, and in order that the labourers, fatigued by work in the fields, might make use of the houses in the city; that that was the reason why the needful buildings were not destroyed.

XXXIII. See what a world of difference there is 89
between the counsels of our ancestors and the madness of these men![a] The former wished Capua to be a retreat for the labourers, a market for the country people, a store-room and granary for Campanian territory; the latter, after the labourers have been driven out, after your profits have been wasted and squandered, intend to establish in this same Capua the seat of a new republic, and are preparing a mighty power to oppose the old. But if our ancestors had thought that, in so glorious an empire and in a people so admirably organized as the Romans, there would be found anyone like Marcus Brutus[b] or Publius Rullus (for these are the only two men we have seen as yet who desired to transfer this republic entirely to Capua), they would certainly not have allowed the name of the city to remain. But they thought that, 90
even if they deprived Corinth and Carthage of their senate and magistrates and the citizens of their lands, there would be no lack of men to restore them and to change everything before we could hear of it; whereas in Campania, under the eyes of the senate and Roman people, no insurrection could occur which could not be put down and crushed before it definitely came to a head. And the event showed that those men, endowed with divine wisdom and foresight, were right. For, after the consulship of Quintus Fulvius and Quintus Fabius,[c] during which Capua

devicta atque capta est, nihil est in illa urbe contra hanc rem publicam non dico factum, sed nihil omnino est cogitatum. Multa postea bella gesta cum regibus, Philippo, Antiocho, Persa, Pseudophilippo, Aristonico, Mithridate et ceteris; multa praeterea bella gravia, Carthaginiense, Corinthium, Numantinum; multae in hac re publica seditiones domesticae, quas praetermitto; bella cum sociis, Fregellanum, Marsicum; quibus omnibus domesticis externisque bellis Capua non modo non obfuit, sed opportunissimam se nobis praebuit et ad bellum instruendum et ad exercitus ornandos et tectis ac sedibus suis recipiendos.
91 Homines non inerant in urbe, qui malis contionibus, turbulentis senatus consultis, iniquis imperiis rem publicam miscerent et rerum novarum causam aliquam quaererent. Neque enim contionandi potestas erat cuiquam nec consilii capiundi publici; non gloriae cupiditate efferebantur, propterea quod, ubi honos publice non est, ibi gloriae cupiditas esse non potest; non contentione, non ambitione discordes. Nihil enim supererat, de quo certarent, nihil, quod contra peterent, nihil, ubi dissiderent. Itaque illam Campanam arrogantiam atque intolerandam ferociam ratione et consilio maiores nostri ad inertissimum ac desidiosissimum otium perduxerunt. Sic et crudelitatis infamiam effugerunt, quod urbem ex Italia pulcherrimam non sustulerunt, et multum in posterum

[a] Famous for its stubborn resistance to the younger Scipio Africanus (134 B.C.).

[b] A Volscian town on the Liris, which fought for Rome against Hannibal. In 125 it revolted against Rome and was destroyed by Opimius.

[c] A Sabellian race, who took the chief part in the Social War waged by the Italian allies to obtain the Roman

was subdued and taken, nothing has even been thought of in that city, much less done, that is against the interests of this republic. We have waged many wars since then with kings—Philip, Antiochus, Perses, Pseudo-Philippus, Aristonicus, Mithridates, and others, and in addition serious wars—against Carthage, Corinth, and Numantia [a]; there have been many internal dissensions, which I pass over; wars with our allies, with Fregellae [b] and the Marsi.[c] In all these internal and foreign wars Capua not only threw no obstacles in our way, but always showed herself most serviceable to us, both in providing material for war, equipping the troops, and giving them quarters in their houses and homes. But at 91
that time there were no men in the city to throw the government into confusion by seditious speeches, by turbulent decrees of the senate, by unjust exercise of authority, and to seek some excuse for revolution. For no one had the power of calling a meeting of the people or of holding a public council; the inhabitants were not carried away by the desire of glory, because, where no honours are publicly conferred, there desire of glory cannot exist; they were not disunited by rivalry or ambition. For there was no longer anything left to contend about, nothing they could aim at to the prejudice of another, nothing to cause disagreement. Therefore that Campanian arrogance and intolerable fierceness, thanks to the systematic prudence of our ancestors, gave place to the most indolent and slothful ease. Thus they avoided the reproach of cruelty by not wiping a most beautiful city off the face of Italy and they carefully

franchise, which was probably also the cause of the revolt of Fregellae.

providerunt, quod nervis urbis omnibus exsectis[1] urbem ipsam solutam ac debilitatam reliquerunt.

92 XXXIV. Haec consilia maiorum M. Bruto, ut antea dixi, reprehendenda et P. Rullo visa sunt; neque te, P. Rulle, omina illa M. Bruti atque auspicia a simili furore deterrent. Nam et ipse, qui deduxit, et qui magistratum Capuae illo creante ceperunt, et qui aliquam partem illius deductionis, honoris, muneris attigerunt, omnes acerbissimas impiorum poenas pertulerunt. Et quoniam Bruti atque illius temporis feci mentionem, commemorabo id, quod egomet vidi, cum venissem Capuam colonia modo deducta L. Considio et Sex. Saltio, quem ad modum ipsi loquebantur, "praetoribus," ut intellegatis, quantam locus ipse adferat superbiam, quae paucis diebus, quibus illo colonia deducta est, perspici atque intellegi potuit.
93 Nam primum, id quod dixi, cum ceteris in coloniis duumviri appellentur, hi se praetores appellari volebant. Quibus primus annus hanc cupiditatem attulisset, nonne arbitramini paucis annis fuisse consulum nomen appetituros? Deinde anteibant lictores non cum bacillis, sed, ut hic praetoribus urbanis anteeunt, cum fascibus bini.[2] Erant hostiae maiores in foro constitutae, quae ab his praetoribus de tribunali sicut a nobis consulibus de consilii sententia probatae ad praeconem et ad tibicinem immolabantur. Deinde

[1] eiectis *most MSS.*: electis *Madvig.*
[2] bini *Zumpt.*

[a] They were preceded by lictors, not with wands of office alone without axes, but with two bundles of rods, with which axes were fastened together.
[b] Those which were not sucklings.

provided for the future by leaving the city itself, after all its nerves had been cut out, impaired and weakened.

XXXIV. These wise measures of our ancestors 92
appeared to Marcus Brutus, as I stated before, deserving of blame, and also to Publius Rullus; nor do those omens and signs which were given to Brutus deter you, Rullus, from a similar madness. For both he who conducted a colony to Capua and those who received a magistracy there of his creation, as well as those who took any part in that colonizing, or received any office or distinction, all underwent the most terrible punishment of the impious. And since I have mentioned Brutus and those times, I will relate what I saw myself when I reached Capua, at the time when the colony had just been established by Lucius Considius and Sextus Saltius, "praetors" (as they called themselves), so that you may understand what pride the very place inspires, as could be clearly seen and understood within a few days of the colony being established. In the first place, as I have 93
said, whereas in all the other colonies the magistrates are called *duumviri*, those of Capua desired that they should be called praetors. If their first year of office had created this desire in them, do you not think that in a few years they would have been eager for the title of consuls? Next, they were preceded by two lictors, not with staves, but with *fasces*, like those who precede our praetors in Rome.[a] The greater victims[b] stood in the forum, waiting until these praetors from their tribunal had inspected them, as is done by us consuls after they have been advised by the college of priests, and were then sacrificed to the sound of flutes and the proclamation of the

patres conscripti vocabantur. Iam vero vultum Considi videre ferundum vix erat. Quem hominem " vegrandi macie torridum " Romae contemptum, abiectum videbamus, hunc Capuae Campano supercilio ac regio spiritu cum videremus, Blossios mihi
94 videbar illos videre ac Vibellios. Iam vero qui metus erat tunicatorum illorum et in Albana et Seplasia quae concursatio percunctantium, quid praetor edixisset, ubi cenaret, quo denuntiasset[1] ! Nos autem, hinc Roma qui veneramus, iam non hospites, sed peregrini
95 atque advenae nominabamur. XXXV. Haec qui prospexerint, maiores nostros dico, Quirites, non eos in deorum immortalium numero venerandos a nobis et colendos putatis? Quid enim viderunt? Hoc, quod nunc vos, quaeso, perspicite atque cognoscite. Non ingenerantur hominibus mores tam a stirpe generis ac seminis quam ex iis rebus, quae ab ipsa natura nobis ad vitae consuetudinem suppeditantur, quibus alimur et vivimus. Carthaginienses fraudulenti et mendaces non genere, sed natura loci, quod propter portus suos multis et variis mercatorum et advenarum sermonibus ad studium fallendi studio quaestus vocabantur. Ligures montani duri atque agrestes; docuit ager ipse nihil ferendo nisi multa

[1] quid enuntiasset *MSS.*: quo denuntiasset *Klotz.*

[a] A. E. Housman (in a short article in *Journal of Philology*, xxxii. 1913) suggests that the words *vegrandi macie torridum* (apparently a quotation from an old play) are the result of a wrong division of *vegrande macre torridum* (with change of *e* and *r* to *i*) and should really be *vegrandem ac retorridum*, " stunted and wizened."

[b] Patriotic Capuans, who resisted the Romans.

[c] The common people who wore the *tunica* instead of the *toga*.

herald. Afterwards the conscript fathers were summoned. The haughty look of Considius was now almost intolerable. When the man, " emaciated and shrivelled up," [a] whom we saw in Rome despised and abject, appeared to us in Capua with Campanian haughtiness and kingly arrogance, I thought I was looking at one of the Blossii or Vibellii.[b] And how 94
frightened the vulgar [c] were! what a running to and fro of people on the Alban and Seplasian roads, wanting to know the terms of the praetor's edict, where he was supping, where he had announced he was going.[d] But we, who had just arrived from Rome, were now not called guests, but strangers and foreigners! XXXV. Those who foresaw these 95
things—I mean our ancestors, O Romans—ought surely to be venerated and worshipped by us among the immortal gods. For what did they see? That which I beg you yourselves now to consider and acknowledge. It is not so much by blood and race that men's characters are implanted in them as by those things which are supplied to us by nature itself to form our habits of life, by which we are nourished and live. The Carthaginians were given to fraud and lying, not so much by race as by the nature of their position, because owing to their harbours, which brought them into communication with merchants and strangers speaking many different languages, they were inspired by the love of gain with the love of cheating. The Ligurians being mountaineers are hardy rustics; the land itself has taught them, since it produces nothing except by dint of

[d] *Quo denuntiasset.* The MS. reading *quid enuntiasset* may be translated, " what he had declared to be his wish by his edict."

cultura et magno labore quaesitum. Campani semper superbi bonitate agrorum et fructuum magnitudine, urbis salubritate, discriptione, pulchritudine. Ex hac copia atque omnium rerum adfluentia primum illa Campana nata est arrogantia, qua a maioribus nostris alterum Capua consulem postularunt, deinde ea luxuries, quae ipsum Hannibalem armis etiam tum
96 invictum voluptate vicit. Huc isti decemviri cum IↃↃ colonorum ex lege Rulli deduxerint, centum decuriones, decem augures, sex pontifices constituerint, quos illorum animos, quos impetus, quam ferociam fore putatis? Romam in montibus positam et convallibus, cenaculis sublatam atque suspensam, non optumis viis, angustissimis semitis prae sua Capua planissimo in loco explicata ac praeclarissime sita[1] irridebunt atque contemnent; agros vero Vaticanum et Pupiniam cum suis opimis atque uberibus campis conferendos scilicet non putabunt; oppidorum autem finitimorum illam copiam cum hac per risum ac iocum contendent; Labicos, Fidenas, Collatiam, ipsum hercle Lanuvium, Ariciam, Tusculum cum Calibus, Teano, Neapoli, Puteolis, Cumis, Pompeiis, Nuceria
97 comparabunt. Quibus illi rebus elati et inflati fortasse non continuo, sed certe, si paulum adsumpserint vetustatis ac roboris, non continebuntur; progredientur, cuncta secum ferent.[2] Homo privatus nisi magna sapientia praeditus vix cancellis et regionibus officii magnis in fortunis et copiis continetur, nedum

[1] prae illis semitis *MSS.*

[2] progredientur, cuncta secum ferent *Orelli*: iuncti, efferentur singulares *Madvig*: cuncti, efferentur singulares *MSS.*

[a] The senate of the *municipia* and *coloniae* (*cf. Pro Roscio Amerino*, ix. 25).

[b] *Praeclarissime sita*: Baiter's conjecture for the corrupt *prae illis semitis*.

intensive cultivation and much toil. The Campanians have always been proud, owing to the fertility of their lands, the abundance of their crops, the healthiness, arrangement, and beauty of their city. It is this abundance, this affluence of everything, which is the origin of that Campanian arrogance which made them demand from our ancestors that one of the consuls should be chosen from Capua, and next of that luxury which vanquished by pleasure Hannibal himself, whom arms had been unable to conquer.
When those decemvirs have settled 500 colonists 96
there according to the law of Rullus, when they have set up 100 decurions,[a] ten augurs, and six priests, imagine their state of mind, their vehemence, their ferocity! They will laugh at and despise Rome, planted in mountains and deep valleys, its garrets hanging up aloft, its roads none of the best, by-ways of the narrowest, in comparison with their own Capua, spread out in a vast and open plain and most beautifully situated.[b] Our Vatican and Pupinian fields will certainly appear not fit to be compared with their rich and fertile plains. The number of towns that are our neighbours they will compare in jest and scorn with theirs—Labici, Fidenae, Collatia, Lanuvium itself, Aricia, Tusculum, will be compared with Cales, Teanum, Neapolis,
Puteoli, Cumae, Pompeii, and Nuceria. Elated and 97
puffed up by these ideas, perhaps not at once, but certainly, if they last a little while and grow strong, there will be no restraining them; they will advance and sweep everything before them. A private individual, unless he be gifted with rare wisdom, can hardly confine himself within the limits and boundaries set by duty in the midst of wealth and great

isti ab Rullo et Rulli similibus conquisiti atque electi coloni Capuae in domicilio superbiae atque in sedibus luxuriosis collocati non statim conquisituri sint aliquid sceleris et flagitii, immo vero etiam hoc magis quam illi veteres germanique Campani, quod in vetere fortuna illos natos et educatos nimiae tamen rerum omnium copiae depravabant, hi ex summa egestate in eandem rerum abundantiam traducti non solum copia, verum etiam insolentia commovebuntur.

98 XXXVI. Haec tu, P. Rulle, M. Bruti sceleris vestigia quam monumenta maiorum sapientiae sequi maluisti, haec tu cum istis tuis auctoribus excogitasti, ut vetera vectigalia expilaretis, exploraretis nova, urbem novam[1] urbi ad certamen dignitatis opponeretis; ut sub vestrum ius, dicionem, potestatem urbes, nationes, provincias, liberos populos, reges, terrarum denique orbem subiungeretis; ut, cum omnem pecuniam ex aerario exhausissetis, ex vectigalibus redegissetis, ab omnibus regibus, gentibus, ab imperatoribus nostris coëgissetis, tamen omnes vobis pecunias ad nutum vestrum penderent; ut idem partim invidiosos agros a Sullanis possessoribus, partim desertos ac pestilentes a vestris necessariis et a vobismet ipsis emptos, quanti velletis, populo Romano induceretis; ut omnia municipia coloniasque Italiae novis colonis occuparetis; ut, quibuscumque in locis vobis videretur ac quam multis videretur, colonias
99 collocaretis; ut omnem rem publicam vestris militi-

[1] expilaretis, exploraretis (*Lauredanus, Turnebus, Clark*) nova, urbem novam huic *Clark.*

[a] His attempt to colonize Capua.
[b] Note the repetition of *-etis* to produce a harsh effect.

resources; with all the more reason those colonists, sought out and chosen by Rullus and men like him, when set up at Capua in the abode of pride and the seats of luxury, will at once seek to commit some crime and wickedness. Indeed, they will be even more violent than those old genuine Campanians, because if they, born and brought up in the midst of a fortune that had long been theirs, were corrupted by an excessive supply of everything, the new generation, transferred from a condition of extreme poverty to one of opulence, will be excited not only by its abundance but also by its novelty.

XXXVI. You, Publius Rullus, have preferred to 98
follow the footprints of the crime[a] of Marcus Brutus rather than the memorials of the wisdom of our ancestors. You and your supporters have thought out a plan[b] to plunder our old revenues, to find out new ones, and to oppose a new city to Rome to rival her dignity, to bring beneath your laws, sway, and authority cities, nations, provinces, free peoples, kings, in fact, the whole world; in order that, when you have drained all the money from the treasury, collected everything from the revenues, exacted as much as you can from all kings, peoples, and our generals, they may still have to pay you money at your nod; that, after buying lands, some from the Sullan occupiers, which cause odium, others desolate and plague-stricken from kinsfolk and even yourselves, you might plant them on the Roman people at whatever price you like; that you might occupy all the municipal towns and colonies of Italy with new colonists, and found colonies wherever and in as many places as
you please; that you might surround the entire 99
republic with your soldiers, cities, and garrisons,

bus, vestris urbibus, vestris praesidiis cingeretis atque oppressam teneretis; ut ipsum Cn. Pompeium, quoius praesidio saepissime res publica contra acerrimos hostes et contra improbissimos cives usa est, spoliare[1] atque horum conspectu privare possetis; ut nihil auro et argento violari, nihil numero et suffragiis depravari, nihil vi et manu perfringi posset, quod non vos oppressum atque ereptum teneretis; ut volitaretis interea per gentes, per regna omnia cum imperio summo, cum iudicio infinito, cum omni pecunia; ut veniretis in castra Cn. Pompei atque ipsa castra, si commodum vobis esset, venderetis; ut interea magistratus reliquos legibus omnibus soluti sine metu iudiciorum, sine periculo petere possetis; ut nemo ad populum Romanum vos adducere, nemo producere, nemo in senatum cogere, non consul coërcere, non tribunus plebis retinere posset.

100 Haec ego vos concupisse pro vestra stultitia atque intemperantia non miror, sperasse me consule adsequi posse demiror. Nam cum omnium consulum gravis in re publica custodienda cura ac diligentia debet esse, tum eorum maxime, qui non in cunabulis, sed in campo sunt consules facti. Nulli populo Romano pro me maiores mei spoponderunt; mihi creditum est; a me petere, quod debeo, me ipsum appellare debetis. Quem ad modum, cum petebam, nulli me vobis

[1] populus Romanus (*edd. vett.*) . . . usus est, spoliare *Ussing*: respublica . . . munita est, exercitu victore, *Clark*: rem publicam . . . cives victorem atque.

[a] Either the citizens whom Cicero is now addressing, or Pompeius's victorious army, who might be incited to revolt.

[b] The Campus Martius, where the *comitia centuriata* were held. "In their cradles," those destined to be elected as soon as they were born owing to their ancestors' merits.

and keep it crushed; that you might be able to outrage Pompeius himself, whose protection the State has very often made use of against most vigorous enemies and most worthless citizens, and deprive him of the sight of these men[a]; that there might be nothing, which can be tampered with gold and silver, corrupted by numbers or votes, or broken through by force and violence, which you should not seize and hold under your thumb; that you might in the meantime roam over all nations and kingdoms with supreme military authority, unlimited jurisdiction, and vast sums of money; that you might enter the camp of Gnaeus Pompeius, and sell the camp itself, if it were advantageous to you; that in the meantime, unhampered by any law, without being afraid of any court of justice, without any risk, you might be able to summon the other magistrates before you; that no one should be able to bring you before the Roman people, summon you to court, compel you to attend the senate, and that no consul should be able to control you, no tribune of the people to put a check upon you.

I am not surprised, considering your folly and lack 100 of restraint, that you have desired these privileges, but I am amazed that you should have hoped to attain them as long as I was consul. For as it is the duty of every consul to exercise the most serious care and attention in protecting the republic, so it is especially incumbent upon those who have been made consuls, not in their cradles but in the campus.[b] None of my ancestors were sureties for me to the Roman people; credit was given to me; it is from me that you ought to claim what I owe you, and to call upon me. Just as, when I was a candidate, none

auctores generis mei commendarunt, sic, si quid deliquero, nullae sunt imagines, quae me a vobis deprecentur. XXXVII. Quare, modo vita suppetat, quam ego conabor[1] ab istorum scelere insidiisque defendere, polliceor hoc vobis, Quirites, bona fide: rem publicam vigilanti homini, non timido, diligenti,
101 non ignavo,[2] commisistis. Ego is consul, qui contionem metuam, qui tribunum plebis perhorrescam, qui saepe et sine causa tumultuer, qui timeam, ne mihi in carcere habitandum sit, si tribunus plebis duci iusserit? Ego cum vestris armis armatus[3] insignibusque amplissimis ornatus, imperio, auctoritate, non horreo in hunc locum progredi posse vobisque auctoribus improbitati hominis resistere nec vereor, ne res publica tantis munita praesidiis ab istis vinci aut opprimi possit. Si antea timuissem, tamen hac contione, hoc populo certe non vererer. Quis enim umquam tam secunda contione legem agrariam suasit, quam ego dissuasi? si hoc dissuadere est ac
102 non disturbare atque pervertere. Ex quo intellegi, Quirites, potest nihil esse tam populare quam id, quod ego vobis in hunc annum consul popularis adfero, pacem, tranquillitatem, otium. Quae nobis designatis timebatis, ea ne accidere possent, consilio meo ac ratione provisa sunt. Non modo vos eritis in otio, qui semper esse volueratis, verum etiam istos, quibus odio est otium, quietissimos atque otiosissimos reddam.

[1] conabor *Clark*: si possum *Klotz*: summis *MSS.*
[2] *Inserted by Hervagius.* [3] armatus sim *Zumpt.*

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[a] Translating Clark's suggested correction, *conabor*.
[b] The tribunes could order any magistrate to prison except a dictator.

of my ancestors recommended me to you, so, if I am guilty of any fault, I shall have none of their images to intercede with you on my behalf. XXXVII. Wherefore, provided that life lasts long enough, which I will endeavour [a] to defend from these men's wickedness and snares, I promise you this, O Romans, in all good faith; you have entrusted the republic to a man who is watchful and not timid, active and not
idle. Am I a consul to fear an assembly of the people, 101
to dread a tribune of the people, to be greatly agitated frequently and without reason, to be afraid of going to live in a prison, if a tribune [b] give orders for me to be taken thither? I, since I am armed with your arms and equipped with the most honourable insignia of my office, with your command and authority, I am not afraid to be able to come forward upon this tribunal and, with you to support me, to resist the wickedness of this man, and I have no fear that the republic, fortified by such strong protectors, can be conquered or crushed by men like these. If I might have been afraid before, this assembly, this people would certainly have banished my fears. For who ever found an assembly so favourable to him in persuading an agrarian law as I in dissuading it—if this is "to dissuade" and not rather to demolish and
overthrow it? From this you can understand, O 102
Romans, that there is nothing so desired by the people as that which I, a consul who is a true friend of the people, offer you for this year—peace, tranquillity and quiet. By resolution and judgement I have taken steps to prevent what you feared might happen when we were elected consuls. You will not only enjoy tranquillity as you have always wished, but I will also make those, who hate quiet, most peaceful and full of

Etenim illis honores, potestates, divitiae ex tumultu atque ex dissensionibus civium comparari solent; vos, quorum gratia in suffragiis consistit, libertas in legibus, ius in iudiciis et aequitate magistratuum, res familiaris in pace, omni ratione otium retinere de-
103 betis. Nam si ii, qui propter desidiam in otio vivunt, tamen in sua turpi inertia capiunt voluptatem ex ipso otio, quam vos fortunati eritis,[1] si in hoc statu, quem habetis vestra non ignavia quaesitum, sed virtute partum, otium tenueritis! Ego ex[2] concordia, quam mihi constitui cum collega, invitissimis iis hominibus, qui nos in consulatu inimicos esse et fore aiebant,[3] providi omnibus, prospexi sane, et revocavi fidem,[4] tribunis plebis denuntiavi, ne quid turbulenti me consule conflarent. Summum et firmissimum est illud communibus fortunis praesidium, Quirites, ut, quales vos hodierno die maxima contione mihi pro salute vestra praebuistis, tales reliquis temporibus rei publicae praebeatis. Promitto,[5] recipio, polliceor hoc vobis atque confirmo, me esse perfecturum, ut iam tandem illi, qui honori inviderunt meo, tamen vos universos in consule deligendo plurimum vidisse fateantur.

[1] quo vos fortunam regitis *MSS.*: quo vos fortuna meliore eritis.
[2] quod ego et *MSS.*: *Clark omits* quod, *Lambinus alters* et *to* ex.
[3] et fore aiebant *Madvig*: corporis actibus *MSS.*
[4] idem *MSS.*
[5] promitto *Clark*: pro certo *MSS.*

[a] The whole of this passage down to *revocavi* is hopelessly corrupt, and the various alterations are guesswork. The text is, with one or two exceptions, that of Baiter.

ease. For it is out of disturbance and civil dissensions that such men usually acquire honours, power, and wealth. You, whose influence is based on your votes, your liberty on the laws, your rights on the justice of the courts and the equity of the magistrates, and your property on peace, you ought to preserve your ease by all possible means.[a] For if those who owing to 103
inactivity live in quiet still take pleasure in their disgraceful indolence from that quiet itself, how fortunate will you be, if in this condition which you enjoy you hold fast to this quiet, not sought for by sloth but obtained by your own valiant exertions. Owing to the unanimity which I have established between myself and my colleague,[b] to the great dislike of those men who said that we were and would be enemies to them[c] during our consulship, I have wisely made provision for and taken precaution against all emergencies, and tried to bring those men back to their allegiance. I have also given the tribunes notice not to stir up sedition during my consulship. But the greatest and strongest support of our common fortunes, O Romans, will be that you should show yourselves in all future times of the republic such as you have shown yourselves to me to-day in this great assembly for your own safety. I undertake, I promise you in all sincerity that I will secure that finally those who were jealous of the honour conferred upon me will yet confess that all of you showed the greatest wisdom in your choice of a consul.

[b] Gaius Antonius Hybrida, a man of indifferent character.
[c] Or, "enemies to each other."

THE THIRD SPEECH ON THE AGRARIAN LAW

DE LEGE AGRARIA ORATIO TERTIA

CONTRA P. SERVILIUM RULLUM TR. PLEB. AD POPULUM

1 I. Commodius fecissent tribuni plebis, Quirites, si, quae apud vos de me deferunt, ea coram potius me praesente dixissent; nam et aequitatem vestrae disceptationis et consuetudinem superiorum et ius suae potestatis retinuissent. Sed quoniam adhuc praesens certamen contentionemque fugerunt, nunc, si videtur eis, in meam contionem prodeant et, quo provocati a me venire noluerunt, revocati saltem re-
2 vertantur. Video quosdam, Quirites, strepitu significare nescio quid et non eosdem vultus, quos proxima mea contione praebuerunt, in hanc contionem mihi rettulisse. Quare a vobis, qui nihil de me credidistis, ut eam voluntatem, quam semper habuistis erga me, retineatis, peto; a vobis autem, quos leviter immutatos esse sentio, parvam exigui temporis usuram bonae de me opinionis postulo, ut eam, si, quae dixero, vobis probabo, perpetuo retineatis; sin aliter, hoc ipso in loco depositam atque
3 abiectam relinquatis. Completi sunt animi auresque

ON THE AGRARIAN LAW III

Delivered before the Assembly of the People

I. The tribunes of the people would have done 1
better, O Romans, if, instead of bringing charges to you about me, they had attacked me openly and in my presence; for by doing so they would have retained the opportunity of discussing the matter fairly, the usage of their predecessors and the privileges of their authority. But since they have hitherto shrunk from an open contest and debate, let them now, if they like, come forward in this assembly over which I preside, and although, when challenged by me, they refused to accept my offer, let them at least return to it now
that I have asked them again. I see that certain of 2
you, O Romans, indicate I know not what by your murmurs, and have not brought back the same countenance they showed at my last meeting. Wherefore I beg those of you, who have not believed anything about me, to retain the goodwill which you have always shown towards me; but from you, whose feelings towards me I perceive are slightly changed, I claim the loan for a little time of your good opinion, on condition that you keep it for ever, if I prove to you what I am going to say; but if I do not, that here on this very spot you may
drop it, fling it away, and go home. It has been 3

vestrae, Quirites, me gratificantem septem tyrannis ceterisque Sullanarum adsignationum possessoribus agrariae legi et commodis vestris obsistere. Hoc si qui crediderunt, illud prius crediderint necesse est, hac lege agraria, quae promulgata est, adimi Sullanos agros vobisque dividi aut denique minui privatorum possessiones, ut in eas vos deducamini. Si ostendo non modo non adimi cuiquam glebam de Sullanis agris, sed etiam genus id agrorum certo capite legis impudentissime confirmari atque sanciri; si doceo agris iis, qui a Sulla sunt dati, sic diligenter Rullum sua lege consulere, ut facile appareat eam legem non a vestrorum commodorum patrono, sed a Valgi genero esse conscriptam, num quid est causae, Quirites, quin illa criminatione, qua in me absentem usus est, non solum meam sed etiam vestram diligentiam prudentiamque despexerit?

4 II. Caput est legis quadragesimum, de quo ego consulto, Quirites, neque apud vos ante feci mentionem, ne aut refricare obductam iam rei publicae cicatricem viderer aut aliquid alienissimo tempore novae dissensionis commovere, neque vero nunc ideo disputabo, quod hunc statum rei publicae non magno opere defendendum putem, praesertim qui otii et concordiae patronum me in hunc annum populo Romano professus sim, sed ut doceam Rullum posthac

[a] Possibly important persons who had large holdings of land. Amongst them were probably the two Luculli and M. Crassus, who had rendered valuable support to Sulla.

[b] Attempts had been made after Sulla's death to abolish some of his laws, which Cicero considers would be inopportune at the present time.

dinned into your ears and minds, O Romans, that I wished to gratify the seven tyrants[a] and the other possessors of Sulla's allotments, and so opposed the agrarian law and your interests. If any did believe this, they must first have believed that by this agrarian law which has been proposed the Sullan allotments of land are to be taken away and divided amongst you, or that at least the public land held by private persons is to be in part diminished that you may be settled upon it. If I prove, that far from a clod of earth of the Sullan lands being taken from anyone, lands of that kind are ratified and guaranteed most impudently by the particular article of the law; if I show that Rullus by his law takes such care of the lands given by Sulla that it is easy to see that it has been drawn up, not by the defender of your interests, but by the son-in-law of Valgius: is there any reason, O Romans, why, by that false accusation which he has brought against me in my absence, he should not have displayed his contempt, not only for my carefulness and foresight, but also for yours?

II. There is a fortieth article of the law, which 4
I have purposely avoided mentioning to you before, that I might not seem to be reopening an old wound of the State that is now healed or to be stirring up new disagreements at a most inopportune moment. And my reason for discussing it now is not that I think the present constitution should not be vigorously defended, especially since I have declared myself to the Roman people to be the defender of tranquillity and harmony for the present year,[b] but simply to teach Rullus to keep silent in the future at least if there is any-

in iis saltem tacere rebus, in quibus de se et de suis
5 factis taceri velit. Omnium legum iniquissimam dissimillimamque legis esse arbitror eam, quam L. Flaccus interrex de Sulla tulit, ut omnia, quaecumque ille fecisset, essent rata. Nam cum ceteris in civitatibus tyrannis institutis leges omnes extinguantur atque tollantur, hic rei publicae tyrannum lege constituit. Est invidiosa lex, sicuti dixi, verum tamen habet excusationem; non enim videtur hominis lex
6 esse, sed temporis. Quid, si est haec multo impudentior? Nam Valeria lege Corneliisque legibus eripitur, si cui datur, coniungitur impudens gratificatio cum acerba iniuria; sed tamen habet[1] illis legibus spem non nullam, cui ademptum est, aliquem scrupulum, cui datum est. Rulli cautio est haec: "QUI POST C. MARIUM CN. PAPIRIUM CONSULES." Quam procul a suspicione fugit, quod eos consules, qui adversarii Sullae maxime fuerunt, potissimum nominavit! Si enim Sullam dictatorem nominasset, perspicuum fore et invidiosum arbitratus est. Sed quem nostrum tam tardo ingenio fore putavit, cui post eos consules Sullam
7 dictatorem fuisse in mentem venire non posset? Quid ergo ait Marianus tribunus plebis, qui nos Sullanos in invidiam rapit? "QUI POST MARIUM ET CARBONEM CONSULES AGRI, AEDIFICIA, LACUS, STAGNA, LOCA, POSSESSIONES" (caelum et mare praetermisit, cetera complexus est) "PUBLICE DATA, ASSIGNATA, VENDITA, CONCESSA SUNT" (a quo, Rulle? post Marium et Carbonem consules quis adsignavit, quis dedit, quis

[1] imbibit *Klotz, Orelli.*

[a] See *Pro Roscio Amerino*, xliii. 125.
[b] Referring to Flaccus.
[c] *i.e.*, wishes the necessities of the times call for, not the wishes of an individual.
[d] 82 B.C.

thing in him or his acts which he would prefer not to be mentioned. Of all laws I think that 5
that is the most iniquitous and least like a law, which Lucius Flaccus, the interrex,[a] passed in regard to Sulla—that all his acts, whatever they were, should be ratified. For, while in all other states, when tyrants are set up, all laws are annulled and abolished, in this case[b] Flaccus by his law established a tyrant in a republic. It is a hateful law, as I have said, but there is some excuse for it; for it seems to be not the law of a man, but of the times.[c] But what if I show that this law is 6
far more shameless? For by the Valerian and Cornelian laws there is robbery of land where there is bestowal of it; a shameless favour is united with a grievous wrong; but still these laws leave some hope to the man who has been robbed and some scruples to him to whom it has been given. Here is the proviso in the law of Rullus: WHO AFTER THE CONSULSHIP OF GAIUS MARIUS AND GNAEUS PAPIRIUS.[d] How utterly he has avoided suspicion, by specially naming those consuls who were most opposed to Sulla! For if he had mentioned the name of Sulla the dictator, he thought that would be an obviously unpopular thing to do. But which of us did he think would be so slow-witted as not to remember that Sulla became dictator after those men were consuls? What then does this 7
Marian tribune say, who is dragging us Sullans into unpopularity? LET ALL THE LANDS, BUILDINGS, LAKES, MARSHES, SITES, POSSESSIONS (sky and sea he has omitted, he has got in everything else) WHICH HAVE BEEN PUBLICLY GIVEN, ASSIGNED, SOLD, AND GRANTED (by whom, Rullus? after the consulship of Marius and Carbo, who assigned, gave, or granted except

concessit praeter Sullam ?), "EA OMNIA EO IURE SINT" (quo iure ? labefactat videlicet nescio quid. Nimium acer, nimium vehemens tribunus plebis Sullana rescindit), "UT QUAE OPTIMO IURE PRIVATA SUNT." Et-
8 iamne meliore quam paterna et avita ? Meliore. At hoc Valeria lex non dicit, Corneliae leges non sanciunt, Sulla ipse non postulat. Si isti agri partem aliquam iuris, aliquam similitudinem propriae possessionis, aliquam spem diuturnitatis attingunt, nemo est tam impudens istorum, quin agi secum praeclare arbitretur. Tu vero, Rulle, quid quaeris ? Quod habent, ut habeant ? Quis vetat ? Ut privatum sit ? Ita latum est. Ut meliore iure[1] tui soceri fundus Hirpinus sit sive ager Hirpinus (totum enim possidet)
9 quam meus paternus avitusque fundus Arpinas ? Id enim caves. Optimo enim iure ea sunt profecto praedia, quae optima condicione sunt. Libera meliore iure sunt quam serva ; capite hoc omnia, quae serviebant, non servient. Soluta meliore in causa sunt quam obligata ; eodem capite subsignata omnia, si modo Sullana sunt, liberantur. Immunia commodiore condicione sunt quam illa, quae pensitant ; ego Tusculanis pro aqua Crabra vectigal

[1] meliore iure *Pluygers* : melior *MSS.*

Sulla ?) AFTER THE CONSULSHIP OF MARIUS AND CARBO, REMAIN UNDER THE SAME TITLE (what title ? But I suppose he is going to upset titles somewhat ? Our tribune is too active, too energetic ; he is abolishing some acts of Sulla) AS THOSE THINGS WHICH ARE PRIVATE PROPERTY ON THE BEST TITLE. Shall one then hold them by a better title than those which come down to us from our fathers or ancestors ? By a better.
But the Valerian law does not say this, the Cornelian 8
laws do not sanction this, Sulla himself does not demand it. If those lands have any share of legality, any resemblance to private ownership, any hope of permanent possession, there will not be one of those men so impudent as not to consider himself extremely well treated. What then do you want, Rullus ? That they may keep what they have ? Who forbids it ? That they may keep it as private property ? So it is proposed. That your father-in-law's farm in the Hirpine district—or rather the territory of Hirpinum (for he possesses it all), is held by a better title than my farm at Arpinum, which has come down to me
from my father and grandfathers ? Yes, that is the 9
proviso you want. For those lands are certainly held by "the best title" which are held on the most favourable terms. Lands which are free from easements are held by a better title than those under an easement ; according to this article, all under easement will cease to be so. Those which are unmortgaged are in a better case than those which are mortgaged ; by the same article, all those that are encumbered, if only they were assigned by Sulla, are released from such encumbrances. Those which are tax-free are in a more comfortable position than those which are taxable. I, in respect of my land at Tusculum, have

pendam, quia mancipio fundum accepi; si a Sulla mihi datus esset, Rulli lege non penderem. III.
10 Video vos, Quirites, sicuti res ipsa cogit, commoveri vel legis vel orationis impudentia, legis, quae ius melius Sullanis praediis constituat quam paternis, orationis, quae eius modi in[1] causa insimulare quemquam audeat rationes Sullae nimium vehementer defendere. At, si illa solum sanciret, quae a Sulla essent data, tacerem, modo ipse se Sullanum esse confiteretur. Sed non modo illis cavet, verum etiam aliud quoddam genus donationis inducit; et is, qui a me Sullanas possessiones defendi criminatur, non eas solum sancit, verum ipse novas adsignationes
11 instituit et repentinus Sulla nobis exoritur. Nam attendite, quantas concessiones agrorum hic noster obiurgator uno verbo facere conetur: "QUAE DATA, DONATA, CONCESSA, VENDITA." Patior, audio. Quid deinde? "POSSESSA." Hoc tribunus plebis promulgare ausus est, ut, quod quisque post Marium et Carbonem consules possidet, id eo iure teneret, quo quod optimo privatum est[2]? Etiamne, si vi deiecit, etiamne, si clam, si precario venit in possessionem? Ergo hac lege ius civile, causae possessionum, prae-
12 torum interdicta tollentur. Non mediocris res neque parvum sub hoc verbo furtum, Quirites, latet. Sunt

[1] in *supplied by Baiter.*
[2] quo . . . est] quod *MSS.*; est *inserted by Baiter.*

[a] A small artificial stream running through Cicero's property.

to pay a tax for the use of the Aqua Crabra,[a] because I obtained my farm by legal purchase; if it had been given to me by Sulla, by the law of Rullus I should not have to pay anything. III. I see that you, my 10
friends, as the nature of the case compels you, are stirred to indignation by the impudence of the law or of Rullus's speech: of the law, since it establishes a better title to estates assigned by Sulla than to hereditary property, of the speech since, in a cause of that kind, he dares to accuse anyone of defending the principles of Sulla with too great vehemence. But, if he were content only to ratify the Sullan allotments, I would say nothing, provided he confessed that he was one of his partisans. But he not only gives security to them but even increases their possessions by some kind of donation; and the man who charges me with defending the donations of Sulla not only ratifies them, but appoints fresh allotments himself, and suddenly here is Sulla risen from the dead! For consider what vast grants of land 11
this accuser of ours endeavours to make by a single word: THE LANDS WHICH HAVE BEEN GIVEN, DONATED, GRANTED, OR SOLD. Very well, I hear. What next? POSSESSED. So this is what a tribune of the people has ventured to propose to enact—that anyone who has been in possession of a property since the consulship of Marius and Carbo should hold it by the best title that anyone can hold private property! What! even if he has turned out the owner by violence, has obtained possession of it stealthily, or on sufferance? So then this law will annul civil law, the titles to possessions, the provisional decisions of the praetors. This is not an unimportant matter, my friends, nor is 12
it a petty larceny that is hidden under this expression.

enim multi agri lege Cornelia publicati nec cuiquam adsignati neque venditi, qui a paucis hominibus impudentissime possidentur. His cavet, hos defendit, hos privatos facit; hos, inquam, agros, quos Sulla nemini dedit, Rullus non vobis adsignare vult, sed eis condonare, qui possident. Causam quaero, cur ea, quae maiores vobis in Italia, Sicilia, Africa, duabus Hispaniis, Macedonia, Asia reliquerunt, venire patiamini, cum ea, quae vestra sunt, condonari possessori-
13 bus eadem lege videatis. Iam totam legem intellegetis, cum ad paucorum dominationem scripta sit, tum ad Sullanae assignationis rationes esse accommodatissimam. Nam socer huius vir multum bonus est; neque ego nunc de illius bonitate, sed de generi impudentia disputo. IV. Ille enim, quod habet, retinere vult neque se Sullanum esse dissimulat; hic, ut ipse habeat, quod non habet, quae dubia sunt, per vos sancire vult, et, cum plus appetat quam ipse Sulla, qui his rebus resisto, Sullanas res defendere criminor.
14 "Habet agros non nullos," inquit, "socer meus desertos atque longinquos; vendet eos mea lege, quanti volet. Habet incertos ac nullo iure possessos; confirmabuntur optimo iure. Habet publicos; reddam privatos. Denique eos fundos, quos in agro

[a] The phrase *multum bonus* seems undoubtedly conversational.

For there are a number of lands confiscated by the Cornelian law, which have neither been assigned nor sold to anyone, and are occupied by a few men in a most shameless manner. It is these lands that he guarantees, confirms their possession, and makes them private property; Rullus does not mean to assign these lands to you, which Sulla allotted to no one, but to make them over for good to those who are in possession of them. I ask why you should allow the properties which your ancestors bequeathed to you in Italy, Sicily, Africa, the two Spains, Macedonia, and Asia, to be sold, when you see property which is your own made over to the present possessors
by the same law. You will now understand that the 13
whole law, while it has been drawn up to secure the domination of a few, is also most perfectly adapted for the system of the allotments of Sulla. All because the father-in-law of Rullus is a good old sort[a]! Nor am I attacking his goodness, but I am discussing the impudence of his son-in-law. IV. The father-in-law desires to keep what he has, and confesses that he belongs to the party of Sulla; the son-in-law, in order to have what he has not, desires to ratify with your assistance those titles which are uncertain; and, while he is more greedy even than Sulla himself, I, who am opposing these measures, am accused of
defending the acts of Sulla. "My father-in-law has 14
some out-of-the-way waste lands; he will be able to sell them at whatever price he likes by virtue of my law. He has others of uncertain title, to the possession of which he has no right at all; they will be assured to him by the best possible title. He holds them as public property; I will make them private property. Lastly, as to those rich and productive

Casinati optimos fructuosissimosque continuavit, cum usque eo vicinos proscriberet, quoad oculis conformando ex multis praediis unam fundi regionem formamque[1] perficeret, quos nunc cum aliquo metu tenet, sine ulla cura possidebit."

15 Et quoniam, qua de causa et quorum causa ille hoc promulgarit, ostendi, doceat ipse nunc, ego quem possessorem defendam, cum agrariae legi resisto. Silvam Scantiam vendis; populus Romanus possidet; defendo. Campanum agrum dividis; vos estis in possessione; non cedo. Deinde Italiae, Siciliae ceterarumque provinciarum possessiones venales ac proscriptas hac lege video; vestra sunt praedia, vestrae possessiones; resistam atque repugnabo neque patiar a quoquam populum Romanum de suis possessionibus me consule demoveri, praesertim, Quirites,
16 cum vobis nihil quaeratur. Hoc enim vos in[2] errore versari diutius non oportet. Num quis vestrum ad vim, ad facinus, ad caedem accommodatus est? Nemo. Atqui ei generi hominum, mihi credite, Campanus ager et praeclara illa Capua servatur; exercitus contra vos, contra libertatem vestram, contra Cn. Pompeium constituitur; contra hanc urbem Capua, contra vos manus hominum audacissimorum, contra Cn. Pompeium decem duces comparantur. Veniant et coram, quoniam me in vestram contionem vobis flagitantibus evocaverunt, disserant!

[1] normamque *Clark.*
[2] in *inserted by Naugerius.*

estates, which he has bought one after the other in the district of Casinum, by the proscription of his neighbours as far as the eye could reach, until all these farms completed the appearance of a single large district and estate—these lands, which he now holds with a certain amount of apprehension, he will be able to possess without any anxiety."

Now, since I have shown you for what reason and 15
for whose sake Rullus has brought forward this law, it is for him to make you understand what occupier I am defending when I oppose this law. You are selling the Scantian wood; it is in the possession of the Roman people. I am for the defence. You are dividing Campanian territory; you are in possession of it. I refuse to give it up. Next, I see that possessions in Italy, Sicily, and the other provinces are for sale and proscribed by this law: they are your estates, your possessions; I shall resist and oppose this, and, as long as I am consul, I will not allow the Roman people to be turned out of its possessions by anyone, especially since no advantage is sought for you. For 16
you ought not to remain any longer in error. Is there any one of you inclined to violence, crime, or even murder? No one. And yet, believe me, it is for men of that kind that Campanian territory and the beautiful Capua are reserved; an army is being raised against you, against your liberty, against Gnaeus Pompeius; it is against the city of Rome that Capua is to be opposed, against you that bands of audacious scoundrels are being organized; against Gnaeus Pompeius that ten generals are being appointed. Let them come and, since they have summoned me before your assembly at your request, let them argue the question and answer me face to face!

FRAGMENTA

1. *Cicero Kalendis Ianuariis de lege agraria:* imberba iuventute. (*Charis.* i. p. 95. 20.)

2, 3. *Haec figura* (διεζευγμένον) *ita ornat et amplificat orationem—hoc modo:* Capuam colonis deductis occupabunt, Atellam praesidio communient, Nuceriam, Cumas multitudine suorum obtinebunt, cetera oppida praesidiis devincient. *Tale est et illud:* Venibit igitur sub praecone tota Propontis atque Hellespontus, addicetur omnis ora Lyciorum atque Cilicum, Mysia et Phrygia eidem condicioni legique parebunt. (*Aquila Rom.* 43, p. 36. 3, *Mart. Cap.* 537, p. 482. 24 *Halm.*)

4. Praedam, manubias, sectionem, castra denique Cn. Pompei sedente imperatore decemviri vendent. (*Gell.* xiii. 25. 6, *Non.* 432. 29.)

FRAGMENTS

1. *Imberba iuventute*; (Charisius, *Ars Grammatica*, (ed. C. Barwick, 1925) i. 95) "in beardless youth." (*The reference is perhaps to the description of Rullus in ii.* 5. 13.)

2, 3. *This figure—a disjunctive proposition or statement — embellishes and amplifies discourse in the following manner:* They will occupy Capua, having conducted colonists thither, they will secure Atella with a garrison, they will obtain possession of Nuceria, Cumae with a large number of their people; they will bind together the rest of the towns with garrisons. *Another instance is:* The whole of the Propontis and the Hellespont will therefore be sold under the public crier; the whole coast of the Lycians and Cilicians will be knocked down, Mysia and Phrygia will be put under the same conditions and laws. (*The reference is perhaps to ii.* 15, 38-46.)

4. The decemvirs will sell the booty, the spoils, the division of the plunder (confiscated goods) and lastly the camp itself of Gnaeus Pompeius, while the general has to sit still. (*The reference is perhaps to the digressions about Pompey.*)

Popularis (II. iii. § 7)

To this word Cicero attaches great importance. As a rule the *populares* are contrasted with the *optimates* (elsewhere with *nobiles*), meaning those who strove to promote the interests of the many as opposed to those of the few (see *Pro Sestio*, xlv. § 96) (not "popular" in the usual English sense). The *optimates* included the nobles and the rich middle class of the *equites*, in fact all who were opposed to change that might affect their interests. They were called the "best people" in the State, the conservative and aristocratic party as opposed to the popular or democratic party.

The term *popularis* is vague, and is used of anyone who favours the *populus* of whatever rank he may be; and it often happened that a noble took the side of the people from disinterested motives or to promote his own interests. Here Cicero defines the word to suit his own views; while in the senate he took the side of the nobles, on the platform he posed as a democrat. It is often used in the sense of turbulent, a turbulent fellow, according to the view taken of a popular orator or demagogue.

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